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

TERESITA CAMACHO DELA CRUZ, <u>et al.</u>)	Civil Action No. 91-259
)	
Plaintiffs,)	
)	MEMORANDUM DECISION AND
v.)	ORDER ON DEFENDANTS' MOTION
)	FOR RECONSIDERATION OF
HOTEL NIKKO SAIPAN, INC., <u>et al.</u> ,)	PARTIAL SUMMARY
)	JUDGMENT
Defendants.)	

This matter came before the Court on May 24, 1995, on the motion of Defendant Hotel Nikko Saipan, Inc. ("Nikko"), Blanco Vende, Ltd. ("Blanco Vende"), and Realty Trust Corp. ("Realty Trust") for reconsideration of this Court's May 2, 1995 Memorandum Decision and Order Granting Partial Summary Judgment. These Defendants argue that the Court's Order misinterpreted the terms of Public Law 8-32, which, Nikko asserts, entitle it to judgment as a matter of law. Plaintiffs respond that the statute violates Article XII, § 5 of the Commonwealth Constitution and therefore cannot stand. The Court, having reconsidered the pleadings on file, the arguments of counsel, and the applicable law, now renders its decision.

FOR PUBLICATION

¹ Reconsideration is deemed proper in this case because Defendant has pointed to a clear error of law in the Court's May 2, 1995 Order. See *Infra*, note 4.

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I. FACTS

Plaintiffs have submitted a considerable amount of evidence regarding the transactions and the business entities at issue here, and argue that more discovery is needed to develop a still fuller record. Defendants, in contrast, base their motion on the barest factual outline, arguing that these facts alone entitle them to summary judgment. The recitation below will contain only such facts as are necessary to determine the motion at hand.

1. **The Transactions.**

This lawsuit concerns a parcel of property in San Roque/Matanza, Saipan, identified as Lot Number 006 B 03 and consisting of 3,183 square meters. *Plaintiff's Exh. at 51*. On August 1, 1983, Plaintiffs conveyed this property to two corporations: Realty Trust Corp. and Blanco Vende, Ltd. On the same day, Realty Trust conveyed its interest in the property to Blanco Vende. *Id.* at 59. Blanco Vende remains the record owner of the property. The purchase price of the property was paid by Japan Air Lines Development Co., which secured the debt through a mortgage on the property. *Id.* at 62. Blanco Vende subsequently leased the property to Nikko, which constructed a luxury hotel.

2. **The Corporations.**

Realty Trust was incorporated in the Commonwealth on July 30, 1981. *Defendant's Exh. 1*. According to the Articles of Incorporation, the corporation issued one thousand shares of stock. The original subscribers were Bernie S. Cabrera (260 shares), Josefa K. Flores (250 shares), Roger Gridley (250 shares) and First Commonwealth Corp. (240 shares). Ms. Cabrera and Ms. Flores are persons of Northern Marianas descent. *Defendant's Exh. 2*. Realty Trust had its principal place of business in the Commonwealth. *Affidavit of Jack Layne*.

Blanco Vende was incorporated in the Commonwealth on July 8, 1993. *Defendant's Exh. 6*. Blanco Vende had its principal places of business in the Commonwealth. *Affidavit of Riichi Yamamoto*. Its Articles of Incorporation list one thousand shares outstanding, subscribed to by the following: Riichi Yamamoto (490 shares), Rita H. Sablan (255 shares) and Bernie S. Cabrera (255 shares). *Defendant's Exhibit 7*. Like Ms. Cabrera, Ms. Sablan is a person of Northern Marianas descent. Mr. Yamamoto held his stock for Japan Air Lines Development Corp., the entity which

1 furnished the purchase price of the stock. *Yamamoto Aff.* According to the Amended Articles of
2 Incorporation, any transfer of real property owned by the corporation had to be approved by 75% of
3 the voting shares. *Certificate of Amendment to Articles of Incorporation* (submitted at oral argument
4 by Plaintiffs)

6 **II. ISSUES**

7 Three issues are presented:

- 8 1. Whether Realty Trust and Blanco Vende were qualified to own land in the
9 Commonwealth at the time of the conveyance from Plaintiffs;
- 10 2. Whether 2 CMC § 4973 mandates judgment as a matter of law that the transactions at
11 issue complied with Article XII of the Commonwealth Constitution;
- 12 3. Whether recent decisions of the Commonwealth Supreme Court foreclose Plaintiffs
13 argument that Blanco Vende is the "alter ego" of Japan Air Lines Development Group.

15 **III. ANALYSIS**

16 **A. SUMMARY JUDGMENT STANDARD**

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

23 **B. STATUS OF REALTY TRUST AND BLANCO VENDE**

24 At the time of the conveyance in question, Article XII, § 5 of the Commonwealth Constitution
25 provided:

26 A corporation shall be considered to be a person of Northern Marianas descent so long
27 as it is incorporated in the Commonwealth, has its principal place of business in the
28 Commonwealth, has directors at least fifty-one percent of whom are persons of

1 Northern Marianas descent and has voting shares at least fifty-one percent of which are
2 owned by persons of Northern Marianas descent as defined by section 4.

3 Public Law 8-32, codified at 2 CMC § 4973, provides:

4 (a) Any corporation shall be deemed eligible to own land in the Commonwealth
5 if it met or meets the applicable four criteria set forth in [Art. XII, § 5] at such times
6 as it acquired or acquires such interest. In conformity with Section 5 of Art. XII,
7 beneficial title shall not be severed from legal title, and record proof of stock
8 ownership and percentage of directors of Northern Marianas descent shall be
9 conclusive as to which persons are directors or stockholders.

10 (b) Clear and convincing proof shall be required to disregard the corporate
11 entity status of a corporation for purposes of divesting current owners or lessees of
12 their interests in real property. The court may impose sanctions on any party or
13 counsel bringing a proceeding on the basis of proof which could not have been
14 reasonably believed to be clear and convincing.

15 (c) In any proceeding to invalidate the title or interest of any transferee of real
16 property from a corporation pursuant to Article XII, evidence of the conduct of the
17 corporation or any persons associated with it, which conduct occurred after the transfer
18 of the property interest from the corporation to any other person, may not be admitted
19 or in any way considered for the purpose of establishing that the corporate entity
20 should be disregarded.

21 (d) The prevailing party, whether plaintiff or defendant, in any action pursuant
22 to Article XII in which an attempt is made to have the court disregard the corporate
23 entity status of a corporation shall be entitled to an award of reasonable attorney fees.

24 (e) The provisions of this article shall apply to all real property transactions
25 involving corporations heretofore or hereafter entered into, and shall govern in all
26 proceedings in which a final judgment, not subject to appeal, has not been entered
27 prior to October 29, 1993.

28 Here, the record evidence of stock subscriptions and the articles of incorporation of both
companies indicate that they met the four requirements of Article XII, § 5 at the time of the
conveyance. Defendants claim that by the terms of 2 CMC § 4973(a), this evidence is sufficient to
establish the eligibility of Realty Trust and Blanco Vende to own land in the Commonwealth.
Plaintiffs respond that this statute is an unconstitutional legislative infringement upon the powers of
the judiciary.

Statutes are presumed valid. In *re Seman*, 3 N.M.I. 57, 73 (1992). In construing a statute,
courts are constrained to adopt any reasonable interpretation that will avoid unconstitutionality. *Id.*

In Plaintiffs' view, § 4973(a)'s mandate that "record proof of stock ownership [...] shall be
conclusive as to which persons are directors or shareholders" unconstitutionally prevents a court from

1 hearing a claim which alleges that records on file with the Registrar of Corporations are completely
2 false, that persons as owners who in fact have nothing to do with the corporation, or that
3 shareholders listed as being of Northern Marianas descent are in fact not. Plaintiffs' scenarios may
4 be presented in future cases; however, the facts here do not involve such claims. It is undisputed that
5 the persons listed in Defendants' Exhibits 2 and 7 are in fact the shareholders of Realty Trust and
6 Blanco Vende,² and that a majority of these shares were in fact held by persons of Northern Marianas
7 descent. Thus, the Court has no occasion to reach Plaintiffs' constitutional claim. As the
8 Commonwealth Supreme Court noted in *Commonwealth v. Oden*, 3 N.M.I. 186, 202 (1992), a court
9 must never "formulate a rule of constitutional law broader than is required by the precise facts to
10 which it is to be applied" (citation omitted).

11 Plaintiffs further argue that the retroactive application of this statute, mandated by the terms
12 of § 4973(e), violates vested property rights. However, property rights do not vest in this
13 constitutional sense until a final, unreviewable judgment is obtained. *Mafnas v. Laureta*, Civil Action
14 No. 88-696, slip op. at 10 (Super. Ct. May 2, 1995); *Austin v. City of Bisbee*, 855 P.2d 1429, 1435
15 (9th Cir. 1988) (citations omitted). Here, whatever property rights Plaintiffs may have are as yet
16 inchoate and are therefore not subject to constitutional protection from retroactive enactments of the
17 Legislature.

18 In view of the undisputed evidence presented, the Court applies the terms of § 4973(a) and
19 finds that both Realty Trust and Blanco Vende, as corporations, met the formal criteria for owning
20 land in the Commonwealth at the time of the transactions at issue.

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25 ² Plaintiffs do allege that Riichi Yamamoto is not a true owner of Blanco Vende stock, by
26 virtue of his statement that he held his shares for the benefit of Japan Air Lines Development Corp.
27 *Yamamoto Aff.* However, this admission does not affect the balance of ownership of the stock in the
hands of persons of Northern Marianas descent and therefore does not affect this issue presented here.

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1 **C. DISREGARD OF THE CORPORATE ENTITY AND § 4973**

2 The Court must next consider whether its finding above warrants a grant of summary judgment
3 that the transactions at issue satisfied Art. XII as a matter of law. For Plaintiffs do not complain that
4 Realty Trust and Blanco Vende failed to comply with the *formal* requisites of land ownership in the
5 Commonwealth; rather, the essence of Plaintiffs' claim is that these formal corporate structures were
6 "shams" created to circumvent Art. XII and that, as shams, they should be set aside by the Court.
7 Defendants, in turn, base their summary judgment motion on a broad construction of § 4973(a) that,
8 so long as a corporation satisfies the four criteria of Art. XII defining a Northern Marianas
9 corporation, the "corporate veil" cannot be set aside for any reason. *Defendant's Motion* at 11-12.

10 The first rule of statutory construction is to examine the plain meaning of the statute.
11 *Commonwealth Ports Auth. v. Hakubotan Saipan Enter., Inc.*, 2 N.M.I. 212, 221 (1991).
12 Defendants' broad reading of the statute is at odds with the plain language of § 4973(b) and (c), both
13 of which set forth guidelines for the Court in determining whether to disregard the corporate entity.
14 On its face, subsection (a) appears geared only towards the establishment of the corporate entity, i.e.,
15 whether a formal corporation exists, and if so, whether it is formally eligible to own land.
16 Subsections (b) and (c) appear designed to govern those situations in which the corporate entity, once
17 determined to be formally in existence, should be set aside for equitable reasons. *See, e.g.*,
18 *Annotation: Stockholder's Personal Conduct of Operations or Management of Assets as Factor*
19 *Justifying Disregard of Corporate Entity*, 46 ALR 3d 428 (corporate veil pierced "for such reasons
20 as public advantage or the requirements of justice, or by indicating alter ego, fraud, bad faith, or
21 other wrong"). On this reading, subsections (b) and (c) set forth highly restrictive rules which would
22 limit the common-law doctrine of disregard of the corporate entity to cases based on clear and
23 convincing proof, derived from evidence of the corporation's activities prior to the transaction at
24 issue.^f

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26 ³ Defendants argue that such a reading would create a "serious anomaly," in that a
27 corporation could be formally eligible to own land and yet still be in violation of Art. XII.
28 *Defendants' Motion to Reconsider* at 11. This view overlooks the key distinction between initially

1 Defendants offer an alternative reading of subsections (b) and (c), which they claim also
2 follows the plain meaning of the statute. In Defendants' view, these subsections only come into play
3 when there is no record proof of the corporation's ownership to be offered under subsection (a). The
4 Court finds this argument strained. If no record proof is available from the Registrar of Corporations
5 of a corporation's place of incorporation, identities and citizenship of its directors and shareholders,
6 then the entity has failed to comply with the minimum requirements for corporate status. See
7 Commonwealth Corporate Regulations § 16.22, *Commonwealth Register*, Vol. 12, No. 5, at 6995
8 (May 15, 1990) (requirements for annual report to Registrar of Corporations); *Id.*, § 14.20 at 6980
9 (failure to file annual report as grounds for administrative dissolution of corporation); Trust Territory
10 Corporate Regulations § 5.4 *Territorial Register*, Vol. 1, No. 1, at 16 (July 15, 1974) (filing of
11 annual report required); § 6.2, *Id.* at 17 (involuntary dissolution for failure to file annual reports).
12 If this were the case there would be, strictly speaking, no corporate entity to set aside, and the
13 "corporate entity" language of subsections (b) and (c) would be superfluous. Thus, the Court finds
14 that the plain meaning of the statute does not support Defendants' view.

15 Another basic principle of statutory construction is to give effect to the intent of the legislature.
16 *Hakubotan*, 2 N.M.I. at 221. Here, Defendants cite the legislative history of Public Law 8-32 as
17 support for their proffered reading. Special Committee Report 8-7 describes the intent of the
18 legislature in passing subsection (a) as follows:

19 The intent is that the constitutional qualifications of the corporation to own land, that
20 is, the factual questions of whether (a) the corporation is incorporated in the
21 Commonwealth; (b) the corporation has its principal place of business in the
22 Commonwealth; and (c) the requisite percentage of directors and shareholders are of
23 Northern Marianas Descent, are subject to record proof. Record stock ownership and
24 record identity of directors shall be conclusive as to those elements. Once the finder
25 of fact determines that a defendant corporation met the constitutional criteria at the
26 time of acquisition of the real property interest, that shall be conclusive of the
27 corporation's constitutional qualification to have acquired permanent and long-term
28 interest in CNMI land. There shall be no further inquiry into the internal operations
of a qualifying corporation to "pierce the corporate veil" or to determine equitable
ownership, control or interest, or to prove the corporation a "sham." It is the intent
of this legislation that, in conformity with the last sentence of Section 5 of Article XII

27 establishing a corporate entity and the later setting it aside.

1 of the CNMI Constitution, “[b]eneficial title shall not be severed from legal title” by
2 judicial fiat or otherwise.

3 This statement of legislative intent is clearly in support of Defendants' interpretation. Less clear,
4 however, is whether such legislation can be squared with the text of Article XII as it existed at the
5 time of the transactions at issue here.⁴ While a legislature is free to enact statutes to supplement a
6 constitutional provision, such enactments must be in harmony with the constitution and not in
7 derogation of it. *Hainline v. Bond*, 824 P.2d 959, 963 (Kan. 1992).

8 On its face, the text of Art. XII, § 5 simply lists the four formal criteria for corporate land
9 ownership. As such, the provision neither forecloses nor admits the possibility of a statute aimed at
10 completely eliminating the courts' common-law powers to disregard the corporate entity, as
11 Defendants' proffered reading of the statute would do. The legislative history of the original
12 Constitutional Convention is also ambiguous. According to the Report of the Committee on Personal
13 Rights and Natural Resources, the purpose of Art. XII, § 5 "is to maintain control of the corporation
14 in the hands of persons who are of Northern Marianas descent. This is important because the
15 corporation is a conduit for owning land. It is only through control of the corporation that this
16 ownership of the land is controlled." JOURNAL OF THE 1976 NORTHERN MARIANA ISLANDS
17 CONSTITUTIONAL CONVENTION, VOL II, 571 (1976). While this passage emphasizes the importance
18 of local control as the touchstone of Art. XII, § 5, it does not foreclose the possibility that the
19 Framers considered the four objective criteria of Section 5 themselves a sufficient guarantee of local
20 control. The debates of the Framers suggest a general awareness that land alienation restrictions
21 would slow economic growth. However, none of the recorded deliberations of the Convention show
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24 ⁴ In its May 2, 1995 Order, this Court found that Defendants' broad reading of 1 CMC §
25 4973(a) was not consistent with Article XII, § 5 as amended by the Second Constitutional Convention
26 in 1985. In so finding, the Court imposed a limiting construction on the statute to make it consistent
27 with the Constitutional provision. In its motion to reconsider this ruling, however, Defendants
28 correctly point out that on these facts the statute must be judged against the language of the *pre-1985*
Constitution. This reconsideration results from the need to correct this error of law. See *Sablan v.*
Tenorio, Civil Action No. 94-500, slip op. at 2 (Aug. 4, 1994) (correcting clear error proper grounds
for motion to reconsider).

1 that the Framers foresaw the creation of the corporate arrangements which would later prompt legal
2 efforts to "pierce the corporate veil," such as this action.

3 To gain further insight into the meaning of the constitutional text, the Court turns to the
4 debates of the Second Constitutional Convention in 1985. While Defendants rightly assert that the
5 1985 amendments to Article XII are not applicable here, the Court *can* take notice of the 1985
6 Convention's understanding of the pre-amendment text. See *Russ v. Wilkins*, 624 F.2d 914, 924 (9th
7 Cir. 1980) (court can consider subsequent legislative declarations of intent of prior law); Singer, 2B
8 SUTHERLAND STATUTORY CONSTRUCTION, § 49.11 (5th Ed. 1992). The delegates to the 1985
9 Convention repeatedly expressed the view that the original version of Art. XII, § 5 contained a
10 "loophole" which permitted "dummy" corporations of the type alleged to exist here. The 1985
11 delegates were concerned that outside investors "are forming dummy corporations using people of
12 Northern Marianas descent as fronts." JOURNAL OF THE SECOND CONSTITUTIONAL CONVENTION OF
13 THE NORTHERN MARIANA ISLANDS ("2D JOURNAL"), 31st Day at 579 (July 13, 1985) (remarks of
14 Delegate Nabors). As Delegate Kaipat put it:

15 I also mentioned that [...] there were guises who were hiding behind the fifty-one
16 percent vote rights and also behind the very word being labeled as a Northern
17 Marianas descent -- the corporation of Northern Marianas descent. Now, we have
found the loophole. What we are doing now is just plugging up the loophole; so
simple as that.

18 *Id.* At 580. The fact that the Second Constitutional Convention deemed it necessary to amend Art.
19 XII, § 5 is an indication to the Court that the so-called "loophole" in fact existed in the prior law.
20 SUTHERLAND, *supra*. This interpretation is bolstered by the 1985 delegates' specific concern that the
21 amendment they drafted not be given retroactive effect:

22 I think this proposal will close that loophole. But as Delegate Villagomez and as
23 Counsel Lizama and I'm sure Colleague Nabors have explained that we cannot make
24 laws applied retroactively, cannot. It's just like the case of aliens getting permanent
25 residency, they have vested rights already. What we are trying to do is to prevent
26 future wrong doings. These people have vested rights already. We cannot take it
27 away from them. So I think this proposal will prevent, will close future loopholes.
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1 2D JOURNAL, *supra* at 581 (remarks of Delegate Torres). Thus, the 1985 delegates clearly believed
2 that "dummy" corporations were not outlawed by the terms of the original Art. XII, § 5; and that the
3 1985 amendments could not have the effect of divesting current owners of their rights.

4 The Court is bound to apply the law as intended by the Legislature if possible. *Hakubotan*,
5 2 N.M.I. at 221. The legislative and constitutional history discussed above satisfies the Court that it
6 can interpret 2 CMC § 4973(a) in the manner urged by Defendants without offending the
7 constitutional text in force at the time under consideration. Accordingly, the Court holds that, for
8 transactions occurring before January 7, 1986,⁵ this statute forecloses any action to set aside the
9 corporate entity so long as the corporation is able to furnish record proof of the four criteria listed in
10 Art. XII, § 5, as it existed at the time of the conveyance. As discussed in Part III(B) of this
11 Decision, both Realty Trust and Blanco Vende have provided such record proof. The Court finds that
12 this record proof conclusively establishes that Blanco Vende and Realty Trust were entitled to own
13 land in the Commonwealth at the time of the transactions at issue, and that the Court is precluded
14 from any further action to set aside the corporate entities of these Defendants. Summary judgment
15 in Defendants' favor is therefore appropriate.⁶

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24 ⁵ This is the date of certification of the 1985 Amendments to the Commonwealth Constitution.
25 See COMMONWEALTH CONSTITUTION, Schedule on *Transitional Matters*, § 15. The Court expresses
no opinion as to transactions occurring after that date.

26 ⁶ This finding renders unnecessary any comment on Defendants' arguments regarding the
27 effect of recent Supreme Court precedents on Plaintiff's case, and the Court will refrain from ruling
on them.

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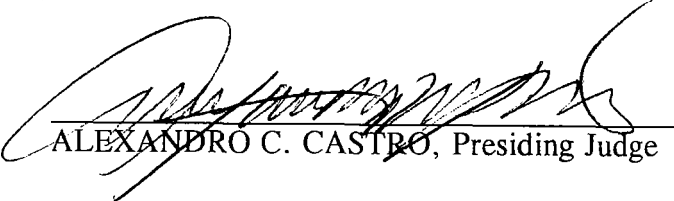
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IV. CONCLUSION

For the foregoing reasons, the Court hereby ORDERS:

The motion for summary judgment by Defendants Nikko, Blanco Vende and Realty Trust on all causes of action in this matter is GRANTED.

So ORDERED this 10 day of July, 1995.


ALEXANDRO C. CASTRO, Presiding Judge