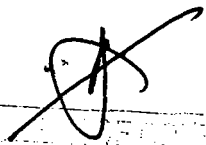


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IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CARLOS F. PUA, as administrator of the )  
estate of Juan Faisao II, and for the heirs of )  
Juan Faisao II, )  
  
Plaintiff, )  
  
v. )  
  
MARIANAS PUBLIC LAND )  
CORPORATION, )  
  
Defendant. )

CIVIL ACTION NO. 92-1027

**ORDER GRANTING  
DEFENDANT'S  
MOTION TO DISMISS**

Plaintiff Carlos F. Pua, as administrator of the estate of Juan Faisao II and for the heirs of Juan Faisao II, brought this claim under the Public Purpose Land Exchange Authorization Act of 1987 ("The Exchange Act") for compensation for a public taking of private property. Defendant Marianas Public Land Corporation ("MPLC") moved to dismiss the claim based upon: a failure to prosecute under Com.R.Civ.P. 41(b); a failure to state a claim under Com.R.Civ.P. 41(b); the statute of limitations; administrative res judicata; and exhaustion of remedies. Plaintiff

**FOR PUBLICATION**

1 opposed the motion, which was heard on July 11, 1996. Having considered the arguments and  
2 submissions of both the parties, the court now renders its decision.

3  
4 **I. FACTUAL AND PROCEDURAL HISTORY**

5 The facts pertinent to the disposition of this case are as follows. Plaintiff is an heir of  
6 Juan Faisao ("Juan Faisao II") and an administrator of his estate. Plaintiff's claim concerns land  
7 allegedly having belonged to Juan Faisao II, first known as Japanese Lots Nos. 778-3, 778-8,  
8 137, 138 and 170, and allegedly redesignated by the Trust Territory Government as Lots Nos.  
9 1637, 1813 and 1814. See Complaint. Plaintiff asserts that in 1953 Juan Faisao II's land was  
10 erroneously determined by the Trust Territory Government as having belonged to Nanyo  
11 Kohatsu Kabushiki ("NKK"), a Japanese national corporation, and as such escheated to the Trust  
12 Territory Government. *Id.*; Defendant's Motion to Dismiss, Exhibits G, H, and I. Plaintiff  
13 maintains that these title determinations constitute a "taking" without compensation in violation  
14 of the Due Process Clause of the NMI Constitution, and actionable under the Public Purpose  
15 Land Exchange Authorization Act of 1987 ("The Exchange Act"), codified at 2 CMC § 4141,  
16 *et seq.* The Exchange Act was designed in part to provide compensation for takings and short  
17 exchanges in the form of awards of public land in lieu of monetary compensation. 2 CMC §§  
18 4143(e)(4), 4143(e)(5), 4145(a).

19 This action was commenced on August 24, 1992. On February 2, 1994, MPLC moved  
20 for summary judgment. The Court granted the motion in part, insofar as it found that the Trust  
21 Territory title determination concerning Lot No. 778-3 was accurate and could not be deemed  
22 a taking. The Court denied the motion as to the remaining lots at issue. *Pua v. MPLC*, Civil  
23 Action No. 92-1027, slip op., (Feb. 24, 1994). The trial of this case commenced on March 1,  
24 1994. At the close of Plaintiff's case in chief, Defendant's moved to dismiss under  
25 Com.R.Civ.P. 41(b) for failure to state a claim upon which relief may be granted. As an aid in  
26

1 making its decision on the motion, the Court wished to view a map of the land in question.  
2 Toward this end, the Court gave Plaintiff leave to reopen his case to locate and furnish the map.  
3 Approximately two years later, Plaintiff scheduled a status conference.<sup>1/</sup> Shortly thereafter,  
4 Defendant brought this motion to dismiss. Defendant bases its motion upon the following  
5 grounds: a failure to prosecute under Com.R.Civ.P. 41(b); a failure to state a claim under  
6 Com.R.Civ.P. 41(b); the statute of limitations; administrative res judicata; and exhaustion of  
7 remedies.

## 8 9 **II. ISSUE**

10 Whether the 20 year statute of limitations under 7 CMC § 2502 applies to claims under  
11 the Public Purpose Land Exchange Authorization Act of 1987, codified at 2 CMC § 4141, *et*  
12 *seq.*, for a compensatory award of public land.

## 13 14 **III. DISCUSSION**

15 Defendant MPLC asserts that Plaintiff's claim is barred by the 20 year statutory  
16 limitations under 7 CMC § 2502 governing actions for the recovery of land. Plaintiff counters  
17 that *Apatang v. MPLC*, 1 N.M.I. 140 (1990) established that the 20 year statutory period is  
18 inapplicable to claims brought pursuant to the Exchange Act.

19 In *Apatang v. MPLC, supra*, the claimant argued that the Trust Territory failed to convey  
20 the full amount agreed to under a land exchange agreement, and sought satisfaction under the  
21 Exchange Act. MPLC argued that the case was precluded by the 6 year statute of limitations  
22 controlling contracts. The Supreme Court held otherwise, finding that the limitation period had  
23 been set aside to allow "short exchange" claims that had previously expired. *Id.* at 156. Later,

24  
25 <sup>1</sup> Plaintiff offers two mutually exclusive explanations for the hiatus: first, that he had not  
26 elected to reopen the case; second, that he had searched for the map in vain.

1 in *Rios v. MPLC*, 3 N.M.I. 512 (1993), the Plaintiff urged the Court to read *Apatang* to mean  
2 that all claims under the Exchange Act were unfettered by a limitations period. Both the trial  
3 court and the higher court rejected the plaintiff's interpretation.

4 In *Rios* the plaintiff sought, alternatively, recovery of Lot 47-4, or an equivalent land  
5 exchange. Either form of relief necessitated proving ownership of Lot 47-4. This was not the  
6 case in *Apatang*. In *Apatang* title was undisputed, the only issue being breach of contract of the  
7 land exchange agreement. The Supreme Court found this distinction critical. *Rios v. MPLC*,  
8 3 N.M.I. 512, 521 (1993)("In *Apatang* there was no dispute that Apatang's father owned the land  
9 that was exchanged with the government. In the instant case, however, Plaintiff's action was a  
10 claim to ownership of land."). Thus, *Rios* held that the "action was clearly for the 'recovery of  
11 land or any interest therein' and 7 CMC Section 2502 governs." *Id.* at 522.

12 In *Taman v. MPLC*, Appeal No. 94-035, slip op. (N.M.I. July 21, 1995), the Supreme  
13 Court revisited this issue in dicta. The Court reaffirmed the *Rios* holding, stating "[t]he  
14 Exchange Act does not serve to set aside a limitations period in an action in which ownership is  
15 contested." *Id.* n. 14 (citing *Rios v. MPLC*, 3 N.M.I. 512, 521 (1993)); *accord*, n. 13. The  
16 applicability of the 20 year statute of limitations was addressed twice more before the trial court  
17 in *Castro v. Division of Public Lands*, Civil Action No. 94-1275 (Super. Ct. Jan. 17, 1996),  
18 *appeal docketed*, No. 96-006 (N.M.I. March 4, 1996) and in *Manalisay v. MPLC*, Civil Action  
19 No. 93-1197 (Super. Ct. Feb. 24, 1996). In each instance the court held that because title to the  
20 property was at issue, the 20 year statute of limitations applied to forestall the action.

21 As in *Rios*, *Castro*, and *Manalisay*, here title to property is at issue. Plaintiff has no  
22 viable claim to an award of public land unless he can prove that Juan Faisao II owned the lots  
23 in question at the time of the 1953 Trust Territory Title Determinations. Thus, this suit is one  
24 for the recovery of land and is subject to 7 CMC § 2502.

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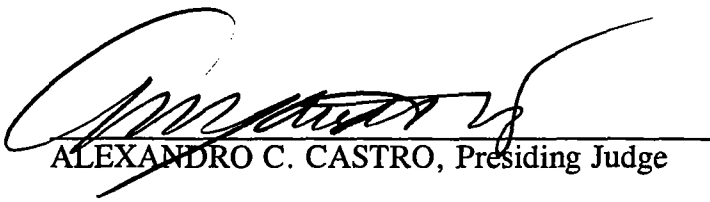
The latest possible date when Plaintiff's cause of action could have accrued is 1953, the year the allegedly erroneous title determinations were issued following hearings attended by Juan Faisao. Therefore the 20 year statute of limitations on Plaintiff's claim expired by 1973. Accordingly, the Court finds that Plaintiff 's claim is time barred. Barring this claim of at least 40 years advances a basic policy concern in which every statute of limitations is rooted: "to prevent factual issues from being tried too long after the events occurred - with witnesses dead or gone, records lost or destroyed, and memories confused or dimmed - at a time when the past cannot be reconstructed with any pretense of accuracy." *Camacho v. United States*, 494 F.2d 1363, 1370 (Ct. Cl. 1974) (quoting *Friedman v. United States*, 310 F.2d 381, 401 (Ct. C. 1962)).

Because the statute of limitations is dispositive in this case, the Court will not address the other issues raised by Defendant in its motion to dismiss.

**IV. CONCLUSION**

For the Foregoing reasons, Defendant's Motion to Dismiss is GRANTED.

SO ORDERED this 8 day of August, 1996.

  
ALEXANDRO C. CASTRO, Presiding Judge