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

WON JUNG JA,

Plaintiff,

v.

KIM JONG YEOL, MOON DUK KOO,  
GEMMA MOON D. KOO, AMERICAN  
EASTERN CO., LTD., KIMSON  
CORPORATION, ZUO XIAO GUANG, and  
JANE DOES I-X,

Defendants.

Civil Action No. 97-962 D

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

**I. PROCEDURAL BACKGROUND**

This matter came before the Court on January 7, 1998, at 9:00 a.m. on Plaintiff's motion for partial summary judgment. Plaintiff appeared through her attorney, S. Joshua Berger, Esq. Defendant Kim Jong Yeol appeared through his attorney, Russell H. Tansey, Esq. This court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its decision.

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**FOR PUBLICATION**

1 **II. FACTS**

2 The material facts are as follows:

3 The real property at issue is comprised of two lots in San Jose, Saipan, both of which are  
4 owned by a Maria Q. Cruz in fee simple.<sup>1/</sup>

5 On September 1, 1988, Maria Cruz and her now-deceased husband Pedro L. Cruz entered into  
6 a long-term lease of the subject property with a Mr. Young J. Oh. This lease was subsequently  
7 recorded. See Complaint, Exhibits 4, 5, and 6. On March 18, 1993, Mr. Oh assigned his leasehold  
8 interest to a Mr. Jang Hae Ja. This assignment was recorded the same day. Id. at Exhibit 7.

9 Some five months later, Mr. Jang assigned his leasehold interest to a Mr. Kim Yong Jin  
10 (hereinafter referred to as "Mr. Kim") on August 12, 1993. This assignment was recorded the next  
11 day. Id. at Exhibit 8. Also on August 12, 1993, Mr. Kim assigned his interest to the subject property  
12 to Plaintiff. Plaintiff recorded her interest on August 13, 1993. Id. at Exhibit 1.

13 In May 1997, Defendant Kim Jong Yeol (hereinafter referred to as "Defendant Kim") obtained  
14 a three-year lease on the subject property from Mr. Kim, the same individual who had previously  
15 assigned his leasehold interest to Plaintiff in 1993. Plaintiff subsequently found out that Defendant  
16 Kim and others had taken possession of the subject property at which time said Defendant was  
17 personally served with a Notice to Vacate. However, the Notice to Vacate was ignored. Two weeks  
18 after service of said Notice, Defendant Kim entered into a separate five-year lease with Defendants  
19 Zuo Xiao Guang and American Eastern Company.

20 On October 6, 1997, Plaintiff filed suit against the named Defendants for ejectment, mesne  
21 profits, and injunctive relief.

22 **III. ISSUES**

- 23 1. Whether Defendant Kim Jong Yeol is deemed to have had constructive notice of Plaintiff's  
24 interest?  
25 2. Whether Plaintiff is estopped from asserting ownership to the subject property?

26 \_\_\_\_\_  
27 <sup>1/</sup>The subject lots are as follows: Lot No. 002 F 47, comprising approximately 787 square meters and  
28 Lot No. 002 F 50, consisting of an adjacent 623 square meters.

1 IV. ANALYSIS

2 A. Summary Judgment Standard

3 The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of  
4 Civil Procedure. Rule 56(a) provides:

5 A party seeking to recover upon a claim . . . may . . . move with or without supporting  
6 affidavits for a summary judgment in the party's favor upon all or any part thereof.

7 Com. R. Civ. P. 56(a). Rule 56(c) continues:

8 The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to  
9 interrogatories, and admissions on file, together with the affidavits, if any, show that there is  
no genuine issue as to any material fact and that the moving party is entitled to a judgment as  
a matter of law.

10 Com. R. Civ. P. 56(c). Partial summary judgments are authorized by Rule 56(d). Once a movant  
11 for summary judgment has shown that no genuine issue of material facts exists, the burden shifts to  
12 the opponent to show that such an issue does exist. Riley v. Public School Sys., 4 N.M.I. 85, 89  
13 (1994).

14 B. The effect of 1 CMC §3711 on Defendant's interest in the subject property

15 In his opposition to the instant motion, Defendant Kim argues that Plaintiff's recording  
16 information was not properly indexed in the recorder's indices and thus failed to impart constructive  
17 notice of Plaintiff's interest in the subject land at the time of the execution of his three year lease.<sup>2/</sup>  
18 As such, Defendant Kim has a valid interest under 1 CMC §3711. However, this Court disagrees.

19 The Commonwealth, as a race-notice jurisdiction, protects bona fide purchasers. The  
20 Commonwealth's recording act states:

21 No transfer of or encumbrance upon title to real estate or any interest therein, other than a  
22 lease for a term not exceeding one year, shall be valid:  
23 (a) Against any subsequent purchaser or mortgagee of the same real estate or interest, or any  
24 part thereof, in good faith for a valuable consideration without notice of such transfer or  
encumbrance, or against any person claiming under them, if the transfer to the subsequent  
purchaser or mortgagee is first duly recorded . . .

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25 <sup>2/</sup>At oral argument on the instant motion, counsel for Defendant Kim notified the Court that his client  
26 had withdrawn the argument that Plaintiff's recording information was improperly indexed. As such,  
27 Defendant concedes he had constructive notice of Plaintiff's interest to the subject property and is  
therefore not a bona fide purchaser under 1 CMC § 3711.

1 1 CMC § 3711(a) (emphasis added). See also Pangelinan v. Unknown Heirs of Mangarero, 1 N.  
2 Mar. I. 387, 395 at n. 5 (citing Black's Law Dictionary). Thus, if Defendant Kim leased the property  
3 for valuable consideration, in good faith, and without notice of Plaintiff's claim, Defendant Kim  
4 would take the property free of Plaintiff's claim. However, this is not the case.

5 From the record, it appears that Plaintiff's assignment from Mr. Kim was properly recorded  
6 on August 13, 1993, as indicated in the Commonwealth Recorder's grantor/grantee index, "F thru  
7 K", for the period 3/1/92 - 1993. See Motion for Summary Judgment, Exhibits B-1, B-4. Secondly,  
8 the very same assignment was also recorded in grantor/grantee index for "T thru Z". Id. at Exhibits  
9 A-1, A-4. Finally, Plaintiff's assignment was recorded in the Document Control Register at the  
10 Recorder's office which indicates a recording date of August 13, 1993. Id. at Exhibits C-1, C-2.  
11 In the alternative, constructive notice is not prevented even if Plaintiff's real property interest wasn't  
12 properly indexed at the Recorder's office. See, i.e., Hildebrandt v. Hildebrandt, 683 P.2d 1288, 1290  
13 (Kan.App.1984) ("The fact that it may not have been properly indexed by the register of deeds will  
14 not prevent constructive notice"). As such, even if it were proven that the Recorder's office failed  
15 to properly index Plaintiff's interest, this would not defeat a finding of constructive notice. The  
16 rationale for this seems reasonable. Plaintiff did all that she was required by law to do in order to  
17 put the world on notice and the clerical error of another should not be held against her.

18 Based on the undisputed facts at the time of oral argument, it is clear that Plaintiff's interest  
19 was recorded and became a matter of public record. Although counsel for Defendant Kim was  
20 unsuccessful in locating Plaintiff's recording information on two occasions (see Declaration of Russell  
21 Tansey), Defendant Kim is deemed to have had constructive knowledge of Plaintiff's interest and thus  
22 is not a bona fide purchaser under 1 CMC § 3711(a). Therefore, Plaintiff's interest is superior to that  
23 of Defendant Kim, thus entitling Plaintiff to immediate possession of the subject property.

24 C. The issue of estoppel as to Plaintiff's claim

25 As a fall back argument to his opposition, Defendant Kim asserts that Plaintiff "clothed" her  
26 predecessor-in-interest Mr. Kim with apparent ownership of the subject property and thus, should be  
27 estopped from asserting her interest to it. The Court disagrees.

1 Estoppel is an equitable doctrine designed to protect the legitimate expectations of those who  
2 have relied to their detriment upon the conduct of another. Pangelinan v. Castro, 2 CR 366  
3 (D.N.M.I. 1985), aff'd, sub nom. De Mesa v. Castro, 844 F.2d (9<sup>th</sup> Cir. 1988). It is not actual fraud  
4 that triggers the estoppel doctrine, but unconscientious or inequitable behavior that results in injustice.  
5 Id.

6 In support of his argument for estoppel, Defendant Kim asserts the following "key" facts, to  
7 wit:(1) that fee simple owner Maria Q. Cruz knew nothing of Plaintiff's leasehold interest; (2) that  
8 the telephone and utility bills for the motel on the subject property reflected ownership in Mr. Kim;  
9 and (3), that the motel had a posted business license indicating "Il Jin Corporation". While these facts  
10 could provide some proof that Mr. Kim may have held himself out as owner of the subject property  
11 and misrepresented his interest to Defendant Kim, nothing before the Court at this time indicates  
12 Plaintiff acted directly or indirectly to mislead Defendant Kim. The issue of greater import is that had  
13 Defendant Kim merely employed the services of a title company, he would have become aware of  
14 Plaintiff's interest. As such, this Court is not moved by Defendant Kim's compelling self portrayal  
15 as the "victim" in this case when ample notice was available by merely searching the public record.

16 As final support to his position, Defendant Kim relies on the lone case of Seidell v. Tuxedo  
17 Land Co., 13 P.2d 686 (Cal.1932). In Seidell, the California Supreme Court held that a real property  
18 owner who allows a deed of trust and note to his property to be taken in the name of a third party  
19 creates in that third party ostensible ownership as to said deed and note. As such, the owner is  
20 estopped from denying his authority to assign his interest. However, this Court does not find the  
21 Seidell holding to be particularly relevant or helpful. Contrary to Seidell, there is nothing before this  
22 Court to indicate that Plaintiff signed any documents (i.e., deed or note) regarding the subject property  
23 or assigned any interests to the same.

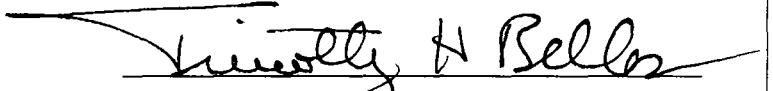
24 In conclusion, Defendant Kim cannot avail himself of the doctrine of equitable estoppel  
25 because he could not have reasonable or legitimate expectations that Mr. Kim was the owner of the  
26 property. Commonwealth law states that he is deemed to have notice that Mr. Kim is not the rightful  
27 owner of the property.

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**IV. CONCLUSION**

For all the reasons stated above, Plaintiff's motion for partial summary judgment is **GRANTED**. Plaintiff is entitled to immediate possession of the property. Furthermore, on the basis of the fact that Defendant Kim has no interest in the property, he must account for and disgorge any profits he received while in possession of the property. Therefore, the only matter remaining is the amount of damages to be awarded based on the evidence to be presented at trial.

So ORDERED this 26 day of Jan, 1998.

  
TIMOTHY H. BELLAS, Associate Judge