



1 submit briefs on the issue of whether any Chamorro custom applies to the instant motion. In  
2 addition, the parties were requested to submit names of their experts to testify (1) as to whether  
3 the act of conveying property by a Chamorro mother to her daughter creates a duty on the  
4 daughter to care for her mother for the duration of her life, and (2) if it does, what is the  
5 appropriate remedy under Chamorro custom if the daughter breached that duty.

6 On November 24 and 25, 1998, the Court heard testimony by the parties' experts focusing  
7 on Chamorro customary law pertaining to the two issues stated above. The Plaintiffs presented  
8 one expert witness, Dr. Donald Howard Rubinstein (hereinafter "Dr. Rubinstein"), an  
9 anthropologist.' The Defendants submitted the names of five experts, but only two testified: Mr.  
10 Pedro Castro and Mr. Mametto Maratita. On December 4, Plaintiffs filed a Motion For Leave  
11 To File Statements And Limited Waiver of Informants Under **Seal**.<sup>2</sup>

12 The Court having reviewed the pleadings, exhibits and the experts' testimony, now renders  
13 its decision.

## 14 15 II. FACTS

16 Tan Amalia has lived in San Antonio on Lot 002 I 01, San Antonio Village, Saipan, since  
17 1954. The Court will refer to "Side A" of the San Antonio residence which Tan Amalia claims as  
18 her house. Side A is the southern portion of the residence and consists of three bedrooms, one  
19 bathroom, a kitchen, a living room, and a carport. One of Defendants' daughters and their live-in  
20 maid occupy two of the bedrooms on Side A of the San Antonio residence. Side B is the  
21 remainder of the house in which the Defendants' and their other children's bedrooms are located.

22 In 1986, Tan Amalia and certain number of her children and grandchildren executed a  
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24 <sup>1</sup> Defendants filed a motion in limine to compel **Plaintiffs'** expert to disclose the complete factual basis  
25 for his expert opinion. Defendants' motion was heard prior to the experts evidentiary hearing. The Court denied the  
26 motion pursuant to 7 CMC § 3303.

27 <sup>2</sup> The Court agrees and adopts Defendants' opposition to **Plaintiffs'** motion. As such, the Court did  
28 not unseal the envelop to review the information provided therein.

1 Deed of Gift of Lot 002 I 01, to Defendant Celina Diaz Taylor (hereinafter "Celina"). Plaintiffs  
2 claim that the deed was purportedly given in exchange for the care of Tan Amalia for the  
3 remainder of her lifetime by Celina in accordance with Chamorro custom.

4 The San Antonio residence is connected to two electric meters, one meter being in the  
5 name of Defendant Marty Taylor and the other meter in the name of Tan Amalia. Tan Amalia  
6 alleges that although Defendants use the electricity on the meter in Tan Amalia's name,  
7 Defendants refuse to pay for the electricity. Tan Amalia receives \$42.00 each month for  
8 electricity, but she cannot pay for Defendants' share of the power bill. On or about July 8, 1997,  
9 the Commonwealth Utilities Corporation disconnected the electric power on Tan Amalia's meter.

10 Tan Amalia left the San Antonio residence on August 9, 1997. Tan Amalia has since been  
11 living with her daughter, Isabel Cabrera, except for one week in May of 1998 when she lived  
12 with her son **Ramon**. **Ramon** testified that he offered Tan Amalia to move in with him or that  
13 Tan Amalia and her live-in maid could live in his vacant three-bedroom house in As Lito.  
14 However, Tan Amalia refused as she desired to live in the San Antonio residence.

15 Isabel Cabrera lives in a two-bedroom house/paint store structure. Since the bedrooms do  
16 not have air conditioning but the paint store section does, Tan Amalia sleeps on a couch in the  
17 store section of the house. Isabel, however, testified that an air conditioner could be made  
18 available and installed in one of the bedrooms for Tan Amalia. Tan Amalia flatly refused as she  
19 merely desires to return to the house in San Antonio.

20 On August 11, 1997, Tan Amalia, together with other plaintiffs, filed this lawsuit against  
21 Defendants. Tan Amalia now requests the Court to partition off Side A so that she may return  
22 and reside in that part of the San Antonio residence.

23 On November 23 and 24, the Court heard the parties' experts on Chamorro custom.  
24 Plaintiffs' expert, Dr. Rubenstein who was hired by Plaintiffs' counsel, conducted a field study on  
25 the specific issues requested by the Court. Dr. Rubenstein requested to interview as many  
26 informants as possible, including both men and women. Other than that, Dr. Rubenstein testified  
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1 that he had no active role in the selection of the nine persons he interviewed. In fact, Dr.  
2 Rubenstein did not know how the informants were chosen. The ages of the informants ranged  
3 from the early 60s up 88 years. Three or four of the informants were females. Due to time  
4 constraints, the interviews occurred on November 14 and 15, about a day and a half. The  
5 duration of each interview lasted 30 minutes to an hour. Out of the nine interviews, three were  
6 conducted with the aid of a Chamorro language translator.

### 8 III. ISSUES

9 1. Whether an applicable Chamorro customary law allows this Court to issue an order  
10 partitioning the San Antonio residence so that Tan Amalia can return and occupy Side A of the  
11 residence pending the outcome of this litigation.

12 2. Absent any applicable Chamorro customary law, whether Tan Amalia is entitled to  
13 injunctive relief under the circumstances pursuant to common law.

### 15 IV. ANALYSIS

#### 16 A. Chamorro Customary Law.

17 The Court must apply Chamorro custom as the decisional law when it exists and there is  
18 no applicable statute. 7 CMC § 3401. The NMI courts in the past have relied on Alexander  
19 Spoehr's monograph pertaining to Chamorro customary law, Saipan: The Ethnology of a War  
20 Devastated Island (Chicago Natural History Museum, 1954)(hereinafter "Spoehr"). See In re  
21 Estate of Deleon Guerrero, 4 N.M.I. 102 (1994); In re Estate of Seman, 4 N.M.I. 129 (1994); In  
22 re Estate of Cabrera, 2 N.M.I. 195 (1991); and In re Estate of Deleon Guerrero, 1 N.M.I. 301  
23 (1990).

24 One deeply-rooted custom of the Chamorros regards the way children give respect to their  
25 parents and elders. "Parental respect is one of the major emphases of traditional Chamorro  
26 culture." Spoehr at 136. Another principle of Chamorro custom is the right of the parent

1 to live in her “family home” until she dies. “The parents have the right to live in the family  
2 house built on the *sitio* as long as either lives. After their death, Chamorros say that the house  
3 should be inherited by the child who has lived the longest with the parents in their old age and  
4 cared for them most.” Id. at 143.

5 In this case, the Court is asked to restore Tan Amalia to Side A of the San Antonio  
6 residence she claims to be her family home. For the Court to do so, Tan Amalia must establish  
7 that she has the right to remain in the San Antonio residence. She must show that the portion of  
8 the residence she is claiming, to the present day, is actually her family home.

9 Neither side was able to clearly define what constitutes a family home. The Court,  
10 however, could infer from the experts’ testimony that the family home is the house which the  
11 parents had built for their family on the “sitio.”<sup>3</sup> The family home is the umbrella that keeps and  
12 protects a Chamorro family. It is a place where the children, grandchildren and relatives freely  
13 come to visit and socialize.

14 From the testimony of Dr. Rubenstein<sup>4</sup>, the Court understands that the degree of adherence  
15 to custom varies from family to family. The durability of custom among families also varies from  
16 family to family. Some families have changed their ways and attitudes more than others, and for  
17 some, the family home is not as important as it used to be.

18 The Court has viewed the San Antonio property as well as the bedroom that Tan Amalia  
19 occupied. The Court is convinced that it was probably not the intention or expectation of Tan  
20 Amalia’s children for Celina and her husband to maintain the residence as Tan Amalia’s family  
21 home for two reasons. First, Tan Amalia herself, along with Celina’s siblings and Celina’s  
22 deceased siblings children all relinquished their interests in the property to Celina outright.  
23 Secondly, they have allowed Celina and her husband to manage and improve the property

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25 <sup>3</sup> “Sitio” is where the family home is situated in the village.

26 <sup>4</sup> While the Court cannot **fully** evaluate the strengths of Dr. Rubinstein’s interview of nine Chamorros  
27 because of the selection process and the short duration due to time constraints, the Court nevertheless finds some of the  
information consistent with **Spoehr’s** monograph.



1 **B. Injunctive Relief Under Common Law.**

2 In order to obtain a preliminary injunction, the moving party must show either (1)  
3 combination of probability of success on the merits and the possibility of irreparable harm, or (2)  
4 the existence of serious questions going to the merits and the balance of the hardships tipping in  
5 its favor. Vision Sports, Inc. v. Melville Corn., 888 F.2d 609, 612 (9<sup>th</sup> Cir. 1989); Marianas  
6 Public Land Trust v. Government of the CNMI, 2 C.R. 999, 1002 (D.N.M.I. App. Div. 1987).  
7 “These two formulations represent two points on a sliding scale in which the required degree of  
8 irreparable harm increases as the probability of success decreases.” Oakland Tribune, Inc. v.  
9 Chronicle Publishing Co., 762 F.2d 1374, 1376 (9<sup>th</sup> Cir. 1985). Under either test, the moving  
10 party must demonstrate a significant threat of irreparable injury. See, Arcamuzi v. Continental  
11 Air Lines, Inc., 819 F.2d 935 (9<sup>th</sup> Cir.). Furthermore, the preliminary injunction is used to  
12 almost exclusively to maintain the *status quo*. The Ninth Circuit has ruled that:

13 A fundamental principal applied in such courts is that the basic  
14 function of a preliminary injunction is to preserve the *status quo ante*  
15 *litem* pending a determination of the action on the merits.

15 Los Angeles Memorial Coliseum Com'n v. Nat. Football, 634 F.2d 1197, 1200 (9<sup>th</sup> Cir. 1980)  
16 citing Larrv P. v. Riles, 502 F.2d 963, 965 (9<sup>th</sup> Cir. 1974); Washington Capitols Basketball Club,  
17 Inc. v. Barrv, 419 F.2d 472, 476 (9<sup>th</sup> Cir. 1969); Tanner Motor Liverv. Ltd. v. Avis, Inc., 316  
18 F.2d 804 (9<sup>th</sup> Cir. 1963) cert. denied, 375 U.S. 821, 84 S.Ct. 59, 11 L.Ed. 55 (1963).

19 In the instant case, the Court finds that Tan Amalia has failed to show irreparable injury  
20 and likelihood of success on the merits. Moreover, the Court finds that the balance of the  
21 hardships tip in Defendants’ favor. Finally, under the circumstances, the preservation of the  
22 *status quo* pending the outcome of the litigation is critical.

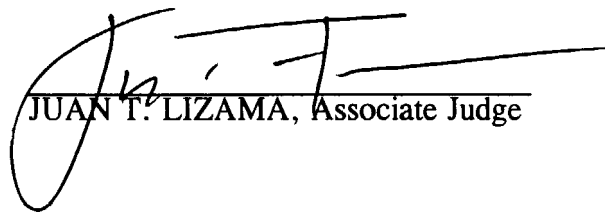
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24 **V. CONCLUSION**

25 Custom is a mixed question of fact and law. In re Estate of Taisakan, 1 CR 326. A party  
26 who intends to rely on a custom as a cause of action or as an affirmative defense must convince  
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1 the fact-finder that he or she (or the family), as a factual matter, actually has practiced the custom  
2 at issue. As for the doctrine of equity, in order for a party to gain the benefit of custom that party  
3 must have followed and applied custom to the situation or circumstances which underlie the  
4 party's assertions. Without such, the Court is asked to apply the law of a particular custom where  
5 that custom does not exist. While the Court feels that customary law is a very important source  
6 of Commonwealth law, it is also bound to apply the applicable law to the facts presented.

7 Therefore, for all the foregoing reasons, Tan Amalia's motion for injunctive relief is  
8 hereby DENIED.

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10 SO ORDERED this 23 day of December, 1998.

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14 JUAN T. LIZAMA, Associate Judge  
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