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

ANTONIO S. IMAMURA, Administrator of the ESTATE OF EDIVES IMAMURA Plaintiff, v. MARIANAS PUBLIC LAND CORPORATION; S.N.M. CORPORATION; MELCHOR A. MENDIOLA; LYDIA M. MENDIOLA; INTERNATIONAL INVESTMENT SERVICES INC.; RANDALL T. FENNELL; and JUAN DOE 1 THROUGH JUAN DOE 25, Defendants.	)	Civil Action No. 94-696 **ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT; DENYING PLAINTIFF'S DEMAND FOR JURY TRIAL; AND GRANTING PLAINTIFF'S REQUEST FOR SETTLEMENT CONFERENCE**

I. PROCEDURAL BACKGROUND

This matter came on for a hearing on April 21, 1999, in Courtroom D at 9:00 a.m. Jeanne H. Rayphand, Esq. appeared on behalf of the Plaintiff. Brian W. McMahon, Esq. appeared on behalf of Defendant Marianas Public Land Corporation. John D. Osborn, Esq. appeared on behalf of Defendant S.N.M. Corporation. Antonio M. Atalig, Esq. appeared on behalf of Defendants Melchor A. Mendiola and Lydia M. Mendiola. The Court, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its decision. **[p. 2]**

II. FACTS

On July 6, 1994, Plaintiff filed a Complaint to Quiet Title to three parcels of real property situated in Rota, Northern Mariana Islands. Parcel No. 1 (T.D. 446) is situated in Agusan, Rota; Parcel No. 2 (T.D. 471) is situated in Mochom, Rota; and Parcel No. 3 (T.D. 511) is situated in Agusan, Rota. On March 31, 1999, Plaintiff filed a Motion for Leave to Amend Complaint

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pursuant to Rule 15 of the Commonwealth Rules of Civil Procedure. Plaintiff seeks leave to add actions for Ejectment and Trespass to the original Quiet Title action. In addition, Plaintiff's proposed amended complaint alleges damages in the amount of $2,000,000 for loss of the fair rental value of the properties at issue.

On September 18, 1998, Plaintiff filed a Demand for Jury Trial. On February 17, 1999, the Court, in addressing the issue of whether Plaintiff is entitled to a jury trial, invited the parties to submit briefs on the issue and set a hearing date for April 21, 1999. On March 3, 1999, Plaintiff filed an Amended Demand for Jury Trial to specify that Plaintiff is demanding a jury trial against all Defendants.

III. ISSUES

1. Whether Plaintiff's Motion for Leave to Amend Complaint to include actions for Ejectment and Trespass as well as a claim for damages in the amount of $2,000,000 shall be granted pursuant to Rule 15(a) of the Commonwealth Rules of Civil Procedure.

2. Whether Plaintiff's Demand for Jury Trial shall be granted where Plaintiff seeks to Quiet Title to the properties at issue and where the principal defendant, Marianas Public Land Corporation, is arguably a public entity and where actions against the Government must be tried by the Court without a jury pursuant to 7 CMC § 3101(b).

[p. 3]

3. Whether Plaintiff's Demand for Jury Trial shall be granted as to each of the remaining Defendants where Plaintiff seeks to Quiet Title to the properties at issue and where each of the remaining Defendants trace their interest in the disputed properties to Marianas Public Land Corporation by lease or deed.

4. Whether Plaintiff's Request for Settlement Conference shall be granted pursuant to Rule 16(a)(5) of the Commonwealth Rules of Civil Procedure.

IV. ANALYSIS

A. <u>Plaintiff's Motion for Leave to Amend Complaint</u>.

On March 31, 1999, Plaintiff filed a Motion for Leave to Amend Complaint pursuant to Rule 15(a) of the Commonwealth Rules of Civil Procedure. Plaintiff's proposed amendment seeks to add actions for Ejectment and Trespass to the original Quiet Title action filed on July 6, 1994. In addition, Plaintiff's proposed amended complaint claims damages in the amount of $2,000,000 for loss of the fair rental value of the properties at issue.

Rule 15(a) of the Commonwealth Rules of Civil Procedure states:

> A party may amend his pleading once as a matter of course or at any time before a responsive pleading is served, or if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. **Otherwise a party may amend his pleading only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires** . . .

Com. R. Civ. P. 15(a) (emphasis added).

The United States Supreme Court enunciated the following standard to be employed when determining whether leave to amend should be granted:

> In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.- the leave sought should, as the rules require, be "freely given." **[p. 4]**

Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962): See also, U.S. v. Webb, 655 F.2d 977, 980 (9th Cir. 1981); Island Aviation, Inc. v. Marianas Islands Airport Authority, 1 C.R. 355, 380 (D.N.M.I. 1983).

Here, Plaintiff filed the original complaint on July 6, 1994, but did not file the Motion for Leave to Amend Complaint until March 31, 1999, over four years later. Nonetheless, Rule 15 requires that "leave to amend shall be freely given when justice so requires." Com. R. Civ. P. 15(a). The reason for this liberal allowance of amendments to pleadings is a recognition that controversies should be decided on the merits whenever practicable. Govendo v. MPLC, 2 N.M.I. 485, 503 (1992), citing 27 Fed Proc L Ed § 62:258 (1984). Also, the Ninth Circuit Court of Appeals has stated that "[w]e know of no case where delay alone was deemed sufficient grounds to deny a Rule 15(a) motion to amend." Howey v. U.S., 481 F.2d 1187, 1190 (9th Cir.

1973). Undue delay, however, is not the only factor to be considered and although each of the Foman factors are relevant, "the crucial factor is the resulting prejudice to the opposing party." In re Southmark Corp., 88 F.3d 311, 314 (5th Cir. 1996). "[O]nly where prejudice is shown or the movant acts in bad faith are courts protecting the judicial system or other litigants when they deny leave to amend." Id., at 1191. The level of prejudice that must be shown is affected by the length of the delay. The longer a party has delayed in bringing the amendment, the less prejudice must be shown to justify denying leave to amend because a party who inexcusably delays in seeking leave to amend is in effect holding back the lawsuit. Tenorio v. Camacho, 3 C.R. 250, 252 (D.N.M.I. Trial Ct. 1987). See also; Phelps v. McClellan, 30 F.3d 658, 662 (6th Cir. 1994). "In determining what constitutes prejudice, the court considers whether the assertion of the new claim or defense would: require the opponent to expend significant additional resources to conduct discovery and prepare for trial: [or] significantly delay the resolution of the dispute." Phelps v. McClellan, supra at 662-663.

In Tenorio v. Camacho, the Court denied a party's motion to amend a cross-claim where: (1) the proposed amendment was filed less than three months before the trial date; (2) the proposed amendment contained no new facts which were not known at the time the original complaint was **[p. 5]** filed; and (3) the other parties would suffer prejudice if the amendment was allowed in that they would have to file answers to the amended complaint and would have to conduct new depositions. Tenorio v. Camacho, supra at 252-255.

In the present matter: (1) the Motion for Leave to Amend Complaint was filed on March 31, 1999, more than four years after the original complaint was filed; (2) the motion was filed after the parties submitted witness lists, exhibits, and trial briefs, after the pretrial conference, and after the original trial date had passed; (3) the proposed amended complaint contains no reference to new facts which were not known at the time the original complaint was filed; and (4) Defendants would be prejudiced if Plaintiff were given leave to amend the complaint because they would be forced to expend additional resources to file answers to the Ejectment and Trespass actions and to address the validity of Plaintiff's additional demand of $2,000,000 in damages.

The decision to grant leave to amend is within the discretion of the trial court. In re Southmark, supra at 314. As such, following the Foman factors as enunciated and applied in Tenorio v. Camacho, the Court finds that to grant Plaintiff's March 31, 1999, motion would unduly prejudice Defendants. Also, Plaintiff has offered no explanation for this delay which might mitigate such prejudice. Therefore, Plaintiff's Motion for Leave to Amend the Complaint is **DENIED**.

B. Plaintiff's Demand for a Jury Trial.

On September 18, 1998, Plaintiff filed a Demand for Jury Trial. On February 17, 1999, the Court, in addressing the issue of whether Plaintiff is entitled to a jury trial, invited the parties to submit briefs on the issue and set a hearing date for April 21, 1999. On March 3, 1999, Plaintiff filed an Amended Demand for Jury Trial to specify that Plaintiff is demanding a jury trial against all Defendants. Each of the Defendant, in their brief to the Court on the jury trial issue, opposed Plaintiff's Demand for Jury Trial.

Rule 39(a) of the Commonwealth Rules of Civil Procedure states "[w]hen a trial by jury has been demanded . . . the trial of all issues so demanded shall be by jury, unless . . . the court upon motion of its own initiative finds that a right of trial by jury of some or all issues does not exist under the statutes . . . " Com. R. Civ. P. 39(a).

[p. 6] The right to a trial by jury in a civil action is codified at 7 CMC § 3101(b), which states:

> In civil actions where the amount claimed or value of the property involved exceeds $1,000 exclusive of interest and costs, the parties shall be entitled to a jury of six persons, **of all legal (as distinguished from equitable) issues**, to the same extent and under the same circumstances that they would be entitled to a trial by jury if the case were pending in a United States District Court . . . **provided, however, that there shall be no right to trial by jury in actions against the Commonwealth specified in 7 CMC § 2251** . . .

7 CMC § 3101(b) (emphasis added).

1. Nature of Plaintiff's Action.

First, the Court looks to the nature of Plaintiff's action. Plaintiff's action is a non-statutory, common law action to Quiet Title. An action to Quiet Title is equitable in nature. Holland v. Wilson, 327 P.2d 250, 252 (Utah 1958). Pursuant to 7 CMC § 3101(b), a party is "entitled to a jury of six persons, **of all legal (as distinguished from equitable) issues** . . .". 7

CMC § 3101(b) (emphasis added). As such, Plaintiff is not entitled to a jury trial against MPLC given the fact that Plaintiff seeks an equitable remedy.

2. Demand for Jury Trial in Action Against Government.

Even if Plaintiff's action were deemed to be at law, Plaintiff would not be entitled to a jury trial in the present action if it is determined that MPLC is a government agency or extension of the Commonwealth Government pursuant to 7 CMC § 3101(b), which states that "there shall be no right to trial by jury in actions against the Commonwealth . . . ". 7 CMC § 3101(b).

The issue of whether an entity is part of the Commonwealth Government was addressed in Marianas Visitors Bureau v. Commonwealth, Civ. Case No. 84-516 (N.M.I. Super. Ct. Jun. 23, 1994) (Memorandum Decision and Judgment). In MVB, the Court examined the Government's role in the operation of MVB and determined that MVB was not a private corporation, but rather a government agency with quasi-corporate powers. Id., at 21. In arriving at this conclusion, the Court relied on the analysis of the Seventh Circuit in Mendrala v. Crown Mortgage Co., 955 F.2d 1132 (7th Cir. 1992). The Mendrala Court weighed five factors in determining whether an entity is in fact part of the government: (1) the government's ownership interest in the entity; (2) government control over the entity's activities; (3) the entity's structure; (4) government involvement in the entity's finances; **[p. 7]** and (5) the entity's function or mission. Id., at 20, citing Mendrala. This same analysis was adopted by the Ninth Circuit in Hallet v. U.S., 877 F.Supp. 1423, 1432 (9th Cir. 1995).

Applying the test set forth above, the Court finds that MPLC is a government entity and as such Plaintiff is not entitled to demand a jury trial against MPLC pursuant to 7 CMC § 3101(b).

First, as with the MVB, no private entity or person has an ownership interest in MPLC. Also, MPLC is a non-profit organization and any funds received by MPLC must be paid to the Government, except for such funds as are necessary to meet the reasonable expenses of administration. There are no private shareholders or investors. See, 2 CMC § 4115(g).

Second, the Government controls MPLC activities by controlling both the appointment of MPLC directors and the number of directors who serve on the MPLC board. Article XI, § 4(a) of

the Commonwealth Constitution states that "[t]he corporation (MPLC) shall have five directors, appointed by the Governor with the advice and consent of the Senate . . . ". N.M.I. Const. art. XI § 4(a). Subsequently, the Commonwealth Government increased the number of directors to nine, also appointed by the Governor with the advice and consent of the Senate. See, 2 CMC § 4114(a).

Further Government control of MPLC activities is evidenced by restrictions on MPLC's power to lease public lands. 2 CMC § 4115(c) and (d) state:

> (c) The corporation (MPLC) may not transfer a leasehold interest in public lands that exceeds 25 years including renewal rights. An extension of not more than 15 years may be given **upon approval by three-fourths of the members of the legislature**.
>
> (d) The corporation (MPLC) may not transfer an interest in more than five hectares of public land for use for commercial purposes **without approval by a majority of the members of the legislature**.

2 CMC § 4115(c) and (d) (emphasis added).

Third, the Commonwealth Government controls MPLC's structure. As previously stated, MPLC was governed in its original form by five directors appointed by the Governor with the advice and consent of the Senate. See, N.M.I. Const. art. XI § 4. The number of directors on the MPLC board was subsequently increased to nine directors, also appointed by the Governor with the advice and consent of the Senate. See, 2 CMC § 4114(a). Furthermore, these directors serve at the pleasure of the Governor and may be removed with or without cause. See, 1CMC § 2901(f).

[p. 8] Fourth, the Court looks to the Government's control of MPLC's finances. MPLC's enabling act, found at 2 CMC §§ 4114-4117, and statutory provisions regarding the budget process, found at 1 CMC §§ 7201-7209, show that the Commonwealth Government retains extensive control over MPLC finances. 2 CMC § 4115(g) states:

> The corporation (MPLC) shall receive all moneys from the public lands and shall transfer these moneys promptly to the Marianas Public Land Trust except that the corporation may retain the amount necessary to meet reasonable expenses of administration.

2 CMC § 4115(g). Also, as a "government corporation," MPLC is required to conform to the Commonwealth Government's budget process pursuant to 1 CMC § 7206, which states, in

pertinent part:

> (a) Each government corporation shall prepare annually a business-type budget program which shall be submitted to the Governor or his designee under such rules and regulations as the office of the Governor may establish . . .
>
> (c) The budget programs of each government corporation shall be transmitted to the legislature for approval, rejection, or modification as a part of the annual budget submission.

1 CMC § 7206.

Finally, the Court must look at MPLC's "function" or "mission." Article XI, Section 1 of the NMI Constitution states that "[t]he management and disposition of public lands . . . shall be the responsibility of the Marianas Public Land Corporation." N.M.I. Const. art. XI § 1. The fact that MPLC sole "function" or "mission" is to manage and dispose of public, not private, lands is evidence that MPLC is an extension of the Commonwealth Government.

Applying the above test as set forth in Mendrala and applied in MVB, the Court finds that MPLC is a government entity and as such Plaintiff is not entitled to demand a jury trial against MPLC pursuant to 7 CMC § 3101(b). Therefore, Plaintiff's demand for a jury trial against MPLC is **DENIED**.

C. Plaintiff's Demand for a Jury Trial as to the Remaining Defendants.

Having resolved the issue of Plaintiff's demand for a jury trial against MPLC, the question remains whether Plaintiff is entitled to a jury trial as to the remaining Defendants. As previously **[p. 9]** stated, Plaintiff's action is a non-statutory, common law action to Quiet Title. An action to Quiet Title is equitable in nature. Holland v. Wilson, supra. Pursuant to 7 CMC § 3101(b), a party is "entitled to a jury of six persons, **of all legal (as distinguished from equitable) issues** . . ." 7 CMC § 3101(b) (emphasis added). As such, Plaintiff is not entitled to a jury trial against the remaining Defendants.

Regardless of the nature of Plaintiff's action, Defendants S.N.M. Corporation, Melchor A. Mendiola, Lydia M. Mendiola, International Investment Inc., and Randall T. Fennell each trace their claim to the properties at issue by virtue of a lease or deed from MPLC. Therefore, resolution of the Quiet Title issues between Plaintiff and MPLC will necessarily resolve any

claim or cross-claim issues arising between the remaining Defendants. As such, Plaintiff's demand for a jury trial as to the remaining Defendants is **DENIED**.

D. Plaintiff's Request for Settlement Conference.

Pursuant to Rule 16(a)(5) of the Commonwealth Rules of Civil Procedure, Plaintiff has requested that the Court facilitate a settlement conference with the assistance of Presiding Judge Edward Manibusan. Plaintiff's request is **GRANTED**.

V. CONCLUSION

For the foregoing reasons, the Court finds that to grant Plaintiff's March 31, 1999, motion would unduly prejudice Defendants. Also, Plaintiff has offered no explanation for this delay which might mitigate such prejudice. Therefore, Plaintiff's Motion for Leave to Amend the Complaint is **DENIED**.

For the foregoing reasons, the Court finds that Plaintiff's Quiet Title action is equitable in nature and that MPLC is a government entity. Therefore, Plaintiff's Demand for Jury Trial against MPLC is **DENIED**.

For the foregoing reasons, the Court finds that Plaintiff's Quiet Title action is equitable in nature and that resolution of the Quiet Title issues between Plaintiff and MPLC will necessarily resolve any issues arising between the remaining Defendants and Plaintiff. Therefore, Plaintiff's demand for a jury trial against the remaining Defendants is **DENIED**.

[p. 10] Pursuant to Rule 16(a)(5) of the Commonwealth Rules of Civil Procedure, Plaintiff has requested that the Court facilitate a settlement conference with the assistance of Presiding Judge Edward Manibusan. Plaintiff's request is **GRANTED**. The parties will be contacted regarding the timing of such a settlement conference and the manner in which it will take place.

The bench trial of this matter is set for November 15, 1999, on Rota.

So ORDERED this 7 day of May, 1999.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge