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FOR PUBLICATION

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

**ESTATE OF JOSE CELIS CAMACHO, by and
through FRANCISCO O. CAMACHO,
Administrator**

CIVIL CASE NO. 05- 0545D

Plaintiff,

v.

**SIMION O. CAMACHO, LB GUAM
OPPORTUNITY LLC, ANNIE DELEON
GUERRERO WAKI a.k.a. ANNIE DELEON
GUERRERO LITTLE, and COMMONWEALTH
OF THE NORTHERN MARIANA
ISLANDS**

**ORDER PARTIALLY DENYING
DEFENDANT'S MOTION TO
DISMISS**

Defendant.

This matter was last before the Court on February 14, 2006, on the motions to dismiss of Defendants Commonwealth of the Northern Mariana Islands (“Commonwealth”) and LB Guam Opportunity LLC (“LB Guam”) (joined by Defendant Annie DLG Waki (formerly “Little,” hereafter referred to as “Waki”)). Appearing at oral arguments and/or on the briefs were: Brien Sers Nicholas for Plaintiff, the Estate of Jose Celis Camacho through Francisco O. Camacho (hereafter, “the Estate”); Steven Carrara for LB Guam; and Assistant Attorney General Kristin D. St. Peter for

1. the Commonwealth. Having carefully considered the pleadings and the arguments of counsel, the
2. Court is now prepared to rule.

3. **I. FACTUAL AND PROCEDURAL BACKGROUND**

4. On October 22, 1953 the Trust Territory of the Pacific Islands issued Jose Celis Camacho
5. (“Jose”) a “Determination of Ownership,” entitled T.D. 702, declaring Jose as owner of Lots 557,
6. 560, 567 (the “Property”).¹ T.D. 702 described the Property as containing “2.7 hectares, more or
7. less, subject to survey.”

8.
9. On January 5, 1973 Jose Camacho granted the Property to his son Simion Camacho
10. (“Simion”). The property description in deed of transfer was identical to that used in T.D. 702.

11. T.D. 702 was surveyed. On February 13, 1974 the Division of Land and Surveys approved a
12. map showing that the Property contained 4.1 hectares. It is unknown whether the additional 1.4
13. hectares was part and parcel to the original 2.7-hectare lot. The newly surveyed lot, containing 4.1
14. hectares, was identified as Lot No. 008 B 08. The Determination of Ownership was *not* amended to
15. reflect the change in acreage.

16. Jose died on June 16, 1977. It is unclear whether he was aware of the survey results.

17.
18. On February 5, 1980, Simion filed a Petition for Appointment of Administrator in Jose’s
19. probate (No. 80-29). The Petition initially identified Lot Nos. 507, 560, and 567 (the lots of T.D.
20. 702) as the property of the deceased, and stated that the Property contained 6.67 acres (2.7
21. hectares).

22. On May 6, 1980 the Commonwealth belatedly issued a “Certificate of Title” to the now-
23. deceased Jose for all 4.1 acres. The lot was identified as Lot No. 008 B 08, although reference was
24. made to T.D. 702.

25.
26. ¹ The basis for this determination (e.g., land compensation or pre-war ownership) is unclear.

1. On October 17, 1980 Simion transferred all 4.1 hectares in equal shares to his children,
2. Isidro K. Camacho, Mariano K. Camacho, Magdalena L. Camacho Torres, Josepha M. K.
3. Camacho, Joaquin K. Camacho, Simona P.K. Camacho, Jose G. K. Camacho, Lourdes A.K.
4. Camacho, Felemon K. Camacho, Roque Camacho, Anuncia K. Camacho, Carmen K. Camacho,
5. Maria K. Camacho, Raymond C.K. Camacho.

6. On February 5, 1982, the Order of Final Distribution in Jose’s probate was filed. Property
7. was divided equally between Jose’s four sons, Simion, Antonio, Francisco, and Jose O. Camacho.
8. The only real property listed was Lots 002 C 01.² Lot Nos. 507, 560, and 567 (now Lot No. 008 B
9. 08) were *not* listed as part of estate. The Court found that “no other assets of the Estate, other than
10. those herein mentioned, remain to be distributed.”

11. On November 17, 1982 the Commonwealth issued a “Certificate of Title” to the 4.1 hectares
12. to the children of Simion. The certificate previously issued to Jose was cancelled by writing
13. “cancelled” on the document itself.

14. As of May 15, 1987, Lot No. 008 B 08 was subdivided into Lot No. 008 B 31 (containing
15. 1002 square meters) and Lot No. 008 B 32 (containing 40,559 square meters).

16. On September 24, 1987 the children of Simion leased all 4.1 hectares (both Lot No. 008 B
17. 31 and Lot No. 008 B 32) to Nansay Micronesia, Inc. (“Nansay”) for 55 years for \$3,348,987. The
18. lease commenced on the same day and was recorded the following day. Also on September 24,
19. 1987, the children of Simion sold the 4.1 hectares of land to Waki for \$36,503, and assigned Waki
20. the lease. This deed was recorded September 25, 1987. Pursuant to the lease, Waki assumed all the
21. rights and obligations of the assignor.

22. In 2005, Nansay lost its lease in a mortgage foreclosure sale to LB Guam. *See LB Guam*

23.

24. ² The Plat of the Lot and the Certificate of Title issued to the heirs suggest that this Lot number is erroneous, and
25. that the correct number is 002 C 13. There is a handwritten correction on the order stating as such.

1. *Opportunity LLC v Nansay Micronesia, Inc. and Nansay Corporation*, No. 02-0657E.

2. On September 23, 2005, Francisco Camacho, one of Simion’s three brothers, moved to re-
3. open the Jose Camacho probate, to appoint himself as the new administrator, and for authorization
4. to sue on behalf of the Estate for matters pertaining to Lot No. 008 B 08.

5. On December 21, 2005, the Estate brought an action to quiet title. From the Commonwealth,
6. the Estate demanded compensation the 1.4-hectare difference between the 2.7-hectare description of
7. land in Simion’s deed and the 4.1-hectare description of land in the Certificate of Title.

8. Both the Commonwealth and LB Guam moved this Court to dismiss Plaintiff’s complaint.
9. Waki joined in LB Guam’s motion. This opinion addresses both motions.
10.

11. II. STANDARD OF REVIEW

12. For purposes of a Com. R. Civ. P. 12(b)(6) motion, the Court views the complaint in the
13. light most favorable to the non-movant, and takes its allegations as true. *Cepeda v. Hefner*, 3
14. N.M.I. 121, 126 (1992). The court considers whether the allegations constitute a statement under
15. Com. R. Civ. Pro. 8(a). *Id.* (citing Charles Wright and Alan Miller, *5A Federal Practice and*
16. *Procedure Civil 2d* § 1357 (1990). The complaint must contain either direct allegations on every
17. material point necessary to sustain a recovery on any legal theory, even though it may not be the
18. theory suggested or intended by the pleader, or contain allegations from which an inference fairly
19. may be drawn that evidence on these material points will be introduced at trial. *In re Adoption of*
20. *Magofna*, 1 N.M.I. 449, 454 (1990).
21.

22. Com. R. Civ. P. 12(b) states that “[i]f, on a motion asserting the defense numbered (6) to
23. dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are
24. presented to and not excluded by the court, the motion shall be treated as one for summary
25. judgment.” In support of its motion, LB Guam has attached the Petition for Letters of
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1. Administration filed by Simion in the original probate case. The Commonwealth has attached an
2. order from *Manalisay v. Marianas Public Land Corporation*, No. 93-1197 (Super. Ct. Apr. 24,
3. 1996). The Estate has attached a letter from Attorney Brien Nicholas to Attorney Steven Carrara.
4. The Court will therefore analyze Defendants' motions to dismiss as motions for summary judgment.

5. Summary judgment is entered against a party if, viewing the undisputed facts in the light
6. most favorable to the nonmoving party, the court finds as a matter of law that the moving party is
7. entitled to the relief requested. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172 (1990).

8. **III. ANALYSIS**

9. **A. Plaintiff has standing to litigate the instant action.**

10. The Commonwealth argues that Plaintiff lacks standing on grounds that the Estate already
11. conveyed all the rights it had in the Property to Simion. Supporting Memorandum at 5. The Court
12. disagrees.
13.

14. Traditionally, common law has required the complainant of a quiet title action to be in
15. possession of the property and have legal title. *Twist v. Prairie Oil & Gas Co.*, 274 U.S. 684, 47 S.
16. Ct. 755, 71 L. Ed. 1297 (1927). Many modern statutes, however, permit suit to be maintained
17. notwithstanding the fact that the plaintiff is out of possession, as long as the plaintiff has an interest
18. in the property. 65 Am. Jur. 2d *Quieting Title* § 40. The term "interest" has been construed to
19. include any title, right, or claim of which the law takes cognizance. *German-American Sav. Bank v.*
20. *Gollmer*, 102 P. 932 (Cal. 1909); *Mannix v. Powell County*, 199 P. 914 (Mont. 1921).

21. Whether the Estate conveyed all rights it had in the Property to Simion is a disputed issue in
22. this case. Plaintiff has standing to quiet title to property in which it arguably has an interest.

23. **B. If an asset of the Estate was never probated, then the statute of limitations does not**
24. **preclude the adjudication of probate issues concerning that asset.**

25. Defendants argue that Plaintiff failed to raise its claim within the statute of limitations by
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1. either 4 CMC § 2502 (20-year limitation on land claims) or the former 67 TTC § 115 (1970) (120-
2. day limit on appeals of determinations of ownership). *See* LB Guam’s Supporting Memorandum at
3. 9; Commonwealth’s Supporting Memorandum at 7. However, the claim would not be precluded if
4. viewed as a matter that was never disposed of in the original probate of the Estate. In the
5. Commonwealth, there is no time period in which heirs must probate a decedent’s estate. If it is
6. discovered that some portion of an estate was not probated, the heirs may, within a reasonable time
7. after the discovery, move to reopen the probate.
8.

9. In the instant case, only 2.7 hectares of the Property were included as an asset in Simion’s
10. February 5, 1980 Petition for Appointment of Administrator. The additional 1.4 hectares were never
11. mentioned at all. The mere passage of time does not preclude the heirs from reopening the probate
12. to adjudicate the ownership of the 1.4 hectares.

13. Thus far, the Court has not received any evidence regarding the notice the heirs received of
14. the final distribution order and/or the adjudication of the Property. The Court takes judicial notice of
15. the Camacho family’s Carolinian and Chamorro heritage. Under Carolinian custom, title to land is
16. vested in the oldest daughter as a trustee, although the land is shared by all siblings as family
17. property. *Tarope v. Igisaiar*, 3 CR 111, 113 (CTC 1987). In the Camacho family, there being no
18. daughters, it is possible that Jose deeded the land to Simion as trustee. Under such a scenario, the
19. remaining siblings may have been unaware of the administration and actual nature of the Property.
20. It is also possible that land was divided at some point pursuant to a partida, a fact that may not have
21. been considered in the original probate matter.
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23. Given these possibilities, defendants have not set forth sufficient evidence to defeat
24. Plaintiff’s claim for untimeliness.
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1. **C. There remain disputed issues of fact regarding the size of the land transferred from**
2. **Jose to Simion.**

3. The Complaint alleges that Jose never conveyed the 1.4 hectares in dispute to anyone, much
4. less Simion. ¶ 23. Defendants counter that the property descriptions in both the determination of
5. ownership and the deed Jose granted to Simion are identical. This may suggest that Jose intended to
6. transfer all the interest he had to Simion.

7. However, the Court cannot overlook Paragraph 4 of Simion’s Petition for Appointment of
8. Administration: “During his life and at the time of his death, Jose Celis Camacho held Lot Nos.
9. 557, 560 and 567, North District, Saipan, CM, containing an area of 6.67 acres [2.7 hectares].” This
10. may suggest that Jose never intended to convey 4.1 acres to Simion, much less 2.7 hectares. It may
11. also serve as evidence of Jose’s awareness that the size of the Property was supposed to be 2.7
12. hectares, not 4.1 hectares. Further, it is unclear why the Property was not mentioned in the Final
13. Order of Distribution. The probate court gave no explanation for removing the property from the list
14. of assets.

15. There is a material dispute regarding the significance of the 1.4-hectare deviation. The
16. Commonwealth argues that it is an insignificant variance, as the metes and bounds description
17. trumps the area estimate. *See* Commonwealth’s Supporting Memorandum at 6, citing *Sablan v.*
18. *Cabrera*, 4 N.M.I. 133 (N. Mar. I. 1994). The Commonwealth notes that there has been no change
19. in the boundary of the land originally belonging to Jose. However, the only boundary descriptions
20. provided in the deeds to Jose and Simion are the boundaries of adjacent properties, themselves
21. unsurveyed. The Court is not convinced that these boundary descriptions are controlling.

22. Plaintiff argues that 1.4 hectares (14,561 square meters) of land is an excessively large
23. amount to fit within the deed description “more or less,” and that the deviation is too substantial to
24. be ignored. Opposition p. 5, ll 14-16. The Court agrees that the deviation may be material, and that
25. 26. 27. 28.

1. it deserves further consideration. *See Apatang v. Marianas Public Land Corp.*, No. 89-570, 1990
2. WL 291858 (D.N. Mar. I. Apr. 30, 1990) (the term “more or less” should be applied to the specific
3. circumstances of each particular case; if the difference is substantial, claimant should be entitled to
4. the difference, absent the statute of limitations bar). The Court requests testimony and further
5. briefing on standard surveying practices and whether a deviation of 1.4 hectares is generally
6. acceptable.

7. Also in need of further analysis is the manner in which Jose originally acquired the property,
8. and how the property was described in that deed. Finally, it remains unknown why, if the Property
9. was later determined to contain 4.1 hectares, no amendment was made to the Determination of
10. Ownership.

11. With these facts unresolved, this case is not ripe for summary judgment.

12. **D. There is insufficient evidence regarding the possibility of property acquisition via**
13. **adverse possession.**

14. It is unclear whether the heirs to the Estate were aware of the 1987 sale of the Property to
15. Waki. It is also unclear whether the Property (or any portion of it) is currently being occupied by
16. Waki, the title holder; LB Guam, the lessee; heirs to the Estate; or no one at all. In the event that
17. one of the parties has adversely occupied the disputed area for the requisite period, it is possible that
18. title has vested in favor of the party in possession. The Court requests briefing on this possibility.

19. **E. The issuance of the Certificate of Title to the children of Simion for 4.1 hectares did not**
20. **constitute a taking.**

21. Plaintiff claims that when the Commonwealth cancelled Plaintiff’s title and issued a new
22. certificate in the name of Simion’s children, the Commonwealth committed an illegal taking.
23. Complaint at ¶ 27. The Commonwealth argues that Plaintiff failed to meet the requisites for a
24. takings claim. Supporting Memorandum at 4, citing *Manalisay v. MPLA*, No. 93-1197 (Sup. Ct.
25. 26. 27. 28.

1. Apr. 30, 1997) (Opinion).

2. In *Manalisay*, Plaintiff contended that the government's issuance of a Certificate of Title in
3. favor of a third party constituted a taking of private land by the government. The Superior Court
4. found that the party's title to the land derived not from the Certificate of Title issued by the Land
5. Commission, but from the Deed of Gift that she received from the original grantor. *See also* 67 TTC
6. § 119 (1972) (Certificates of Title are derived from instruments of transfer, and not a replacement
7. for them). The Superior Court in *Manalisay* concluded that there was no compensable taking. The
8. Supreme Court upheld the decision. The court noted that in order to be compensated for the alleged
9. taking, Plaintiff had to show that (1) the government acquired ownership or took control of the land;
10. and (2) that the taking was done for a public purpose. The court found that the issuance of a
11. certificate of title satisfied neither of these requisites.
12.

13. Plaintiff argues that *Manalisay* is distinguishable, since the claimants in that case never had
14. title to the land. However, this does not change the finding that the issuance of a Certificate of Title
15. (combined with the government's lack of any attempt to control the property) does not constitute a
16. taking.
17.

18. Plaintiff also suggests that the Certificate of Title constitutes a regulatory taking. The Court
19. finds little merit in this argument. A regulatory taking exists only when: (1) regulation fails to
20. advance a legitimate state interest, or (2) regulation denies an owner economically viable use of his
21. land. *K & K Const., Inc. v. Department of Natural Resources*, 575 N.W.2d 531 (Mich. 1998). The
22. circumstances in this case fit neither category.

23. While the Commonwealth's handling of the issuance of the Certificate of Title may have
24. been negligent, the Court cannot find that it constituted a taking.
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1. **IV. CONCLUSION**

2. Because there are unresolved questions concerning the origin of Jose’s deed, the inclusion of
3. the Property in the original probate, Simion’s knowledge of the Property’s true size, and notice
4. received by other heirs, Defendants’ motions to dismiss the quiet title claim, analyzed as motions
5. for partial summary judgment are DENIED. The Commonwealth’s motion to dismiss the inverse
6. condemnation claim, analyzed as a motion for partial summary judgment, is GRANTED.
7.

8. SO ORDERED this 27th day of February 2006.

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10. /s/ _____
11. Juan T. Lizama
12. Associate Judge, Superior Court
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