IN THE SUPREME COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ANTONIO L. PITEG, Plaintiff/ Appellant, v. BERNARDO L. PITEG, MIGUEL L. PITEG and BENUSTO L. PITEG for himself and as guardian of the estate of Emilio Piteg, Serina, Piteg, Jeanita P. Piteg and James Piteg Defendants/ Appellees.	**APPEAL NO. 98-002** **CIVIL ACTION NO. 95-1151** **OPINION**

Argued and Submitted November 8, 1999.

Cite as: *Piteg v. Piteg*, 2000 MP 3

Counsel for Appellants: Reynaldo O. Yana
Saipan, MP

Counsel for Appellees: Theodore R. Mitchell
Saipan, MP

BEFORE: DEMAPAN, Chief Justice, LIZAMA and MANGLONA, Justices *Pro Tem*:

DEMAPAN, Chief Justice:

[1]Appellant Antonio L. Piteg ("Antonio") appeals the December 29,1997 judgment in favor of Defendants/Appellees Bernardo Piteg, Miguel Piteg and Benusto Piteg for himself and as guardian. Antonio brought suit against Appellees to quiet title in certain property based on a Deed of Gift. The trial court found Antonio was barred under the principles of res judicata and waiver and estoppel from enforcing the deed. We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution, as

amended N.M.I. Const. art. IV, § 3 (1997).

ISSUES PRESENTED AND STANDARD OF REVIEW

[2,3,4]The issues before this Court are:

I. Was Antonio barred by res judicata because *In re Estate of Isabel L. Piteg* previously distributed Lot 016 B 03 equally to Antonio and the Appellees? Res judicata is an issue of law and is reviewed *de novo. Santos v. Santos*, 3 N.M.I. 39, 46 (1992); *In re Estate of Camacho*, 4 N.M.I. 22 (1993).

II. Did Antonio waive his right to enforce the Deed of Gift? Waiver is a question of fact and is reviewed for clear error. *United States v. Chichester* 312 F.2d 275 (9th Cir. 1963).

III. Was Antonio estopped by his own actions from claiming Lot 016 B 03? Whether the court erred in deciding estoppel is reviewed under the clearly erroneous standard. *United States v. Derr*, 968 F.2d 943, 945 (9th Cir. 1992).

FACTUAL AND PROCEDURAL BACKGROUND

The parties stipulate to the facts as stated by the trial court in its Decision and Order.

Antonio and his sibling Miguel, Bernardo and Paciona inherited parcels of land in Tanapag, Saipan from their mother, Isabel L. Piteg. On or about November of 1987, Antonio claims he asked Miguel, Bernardo, and Paciona for their interest in one of the parcels known as Lot No. 016 B 03 ("the subject Lot"). As a result, the siblings signed a deed relinquishing their interest in the property.

Appellees countered that Antonio asked them to sign a piece of paper so that Antonio could use the land as collateral for a bank loan to build a house. Appellees denied any knowledge that what they signed in 1987 was a deed relinquishing their interest in the Lot to Antonio.

In 1991, the Appellees, Antonio and other family members leased the land to Tokai Saipan, Inc. Antonio never questioned or challenged the rent payments for the land given to Appellees.

On or about August 24, 1993, Antonio, as the Administrator of the Estate of Isabel L. Piteg, petitioned the court for final distribution of the Estate's one half undivided interest in the subject Lot and Lot No. 016 B 09, proposing that the property be "distributed, conveyed, and confirmed to the heirs of the decedent," including his brothers Bernardo and Miguel, as well as the children of his deceased sister, Paciona L. Piteg.

In 1994 and 1995 the Tokai Saipan, Inc. lease to the lot was amended. Antonio did not

disclose the 1987 deed at that time. In September of 1995, Antonio went to the Carlsmith law office and claimed he was entitled to the rent payments based upon the1987 Deed of Gift. After Antonio took $150,000, Tokai Saipan, Inc. took judgment by default against Antonio for overpayment.

Antonio filed his complaint to quiet title on December 12, 1995. Appellees answered the complaint and asserted the affirmative defenses of failure to state a claim, res judicata, waiver, and estoppel. The parties each moved for summary judgment. On June 11, 1996, the trial court denied the parties respective motions for summary judgment in a memorandum decision. *Piteg v. Piteg*, Civ. No. 95-1151 (N.M.I. Super. Ct. June 11, 1996) (Memorandum Decision Denying Summary Judgment) ("Memorandum Decision"). Appellees unsuccessfully moved for reconsideration.

Trial was held May 29, and June 2-3, 1997. The trial court held: Antonio was barred by res judicata; he waived his right to enforce the Deed of Gift; he was estopped due to actions in the *Estate of Isabel Piteg* and in leasing the property to Tokai Saipan, Inc.; and Appellees relied on Antonio's actions. *Piteg v. Piteg*, Civ. No. 95-1151 (N.M.I. Super. Ct. Dec 29, 1997) (Decision and Order) ("Order"). The parties timely appealed.

ANALYSIS

I. Was Antonio Barred by Res Judicata Because *In re Estate of Isabel L. Piteg* Previously Distributed the Lot Equally to Antonio and the Appellees?

[5,6]The res judicata effect of a prior judgment depends on the scope of the prior cause of action or claim. *Camacho*, 4 N.M.I. at 25; *Santos*, 3 N.M.I. at 49. Res judicata will not only bar matters which were previously litigated, but also those matters which should have been litigated. *Camacho*, 4 N.M.I. at 25.

In the probate cases *In re Rita Neyobul*, *In re Jose N. Lifoifoi II*, and *In re Isabel L. Piteg*, the parties were not adversaries, rather they were perfecting their title. The decrees in the cases of *In re Rita Neyobul*, Civ. No. 91-1095 (N.M.I. Super. Ct. May 5, 1992) (Decree of Final Distribution of the Estate), *In re Jose N. Lifoifoi II*, Civ. No. 93-0424 (N.M.I. Super. Ct. Aug. 24, 1993) (Decree of Final Distribution of the Estate), and *In re Estate of Isabel L. Piteg*, (N.M.I. Super. Ct. Sept. 30, 1993) (Amended Decree of Final Distribution) had the effect of equally dividing interest in the land to the children of Isabel L. Piteg, who was deceased at the time of the previous probate cases.

[7]Appellees executed the Deed of Gift in 1987. At the time the Appellees executed the Deed of Gift they already owned part of Isabel's interest in the land, but their title was not perfected. Probate cases identify heirs and distribute land. The probate court identified the heirs of Isabel L. Piteg. The filing of the Decree of Final Distribution in the *Estate of Isabel L. Piteg* had the effect of confirming title that had vested in the heirs. When the probate was completed for Isabel's estate, only then was title perfect.

[8]The Decree of Final Distribution only distributes what interest Isabel L. Piteg herself had in the property. While a decree of distribution is conclusive as to the rights of heirs, legatees, or devisees, insofar as they claim in such capacities, it does not determine that the deceased had any title to the property distributed; nor does it bind third persons who claim an interest adverse to that of the intestate or testator. It merely determines the succession or testamentary disposition of such title as the decedent may have had. *Shelton v. Vance*, 234 P.2d 1012, 1014 (Cal. 1951); *see also* Memorandum Decision at 5-6.

[9]Antonio's claim derives from contract between Isabel's children, after their rights to the estate were determined in the probate cases. Antonio's claim is not against Isabel L. Piteg's former estate; it does not concern intestate succession or testamentary dispositions. This issue could not have been addressed by the final decree of distribution. To be bound by res judicata an issue must be addressed and decided. *Santos*, 3 N.M.I. at 48. Therefore, the Final Decree of Distribution does not have a res judicata effect and does not preclude the action.

II Did Antonio Waive His Right to Claim Under the Deed of Gift Because of the Participation in the Probate Cases and the Lease of the Lots?

[10,11,12]Antonio had an obligation to see that Isabel's estate be distributed in a manner consistent with the statutorily defined rights of the heirs at the time of her death. *See* 8 CMC 2901 *et seq*. As administrator, Antonio was in a fiduciary relationship with the other heirs. Candor and fidelity are hallmarks of the relationship between an administrator and heirs. Dealings between a fiduciary with a near relative, whether by blood or marriage, are not prohibited, but are a factor to be considered in determining the fairness and good faith of the transaction. *Setaro v. Pernigotti,* 136 A. 571, 573 (1927). As a fiduciary Antonio was required to be fair and equitable, and if he breached that duty, the probate order could be remanded.

Antonio's claim to sole ownership of a one half interest in the Lot arises out of an alleged transfer by Bernardo, Miguel and Paciona of their vested interests in the Lot after Isabel's death. Thus, Antonio is asserting contractual rights against the Appellants pursuant to a deed of gift, not additional rights as an heir of Isabel's estate. *Piteg v. Piteg,* No. 95-1151, (N.M.I. Super. Ct. Oct. 31, 1996) (Memorandum Decision Denying Defendants' Motion for Reconsideration).

[13]Antonio argues he did not waive his right to claim ownership of the Lot under the Deed of Gift because participation in the probate cases and in the lease of the lots are insufficient to prove waiver. We agree. A waiver is a voluntary relinquishment of a known right, *Trinity Ventures, Inc. v. Guerrero*, 1 N.M.I. 54, 62 (1990), with knowledge of its existence and intent to relinquish it. *CBS, Inc. v. Merrick*, 716 F.2d 1292,1295 (9th Cir. 1983). Mere silence does not constitute a waiver unless there is an obligation to speak. *United States v. Chichester*, 312 F.2d 275 (9th Cir. 1963).

[14]Although the Court finds neither res judicata nor waiver apply to the particular facts of this case, the Court is disturbed by Antonio's silence during the probate proceedings in his capacity as Administrator. As an administrator, Antonio had additional duties beyond those of a participant in the probate proceedings. In *Satti v. Rago*, 441 A.2d 615 (1982), the court found the relationship between an administrator and an heir of the estate analogous to that of a trustee who

owes a duty of equity and fair dealing.[1] The Court seriously questions Antonio's lack of candor to the probate court by not disclosing the fact of the deed, but what remains is that he holds a deed of gift entitling him to the property. A breach of duty is difficult to sustain; the relative heirs are presumed to have known about the deed of gift as they were signatories to the deed. Therefore, Antonio's silence as to the deed is not fatal to this case.

[15]Courts have held that a court has the inherent power to set aside a decree procured by extrinsic fraud. *Cross v. Tustin*, 236 P.2d 142 (1951). The doctrine of extrinsic fraud is quite broad.[2] Extrinsic fraud is fraud that induced a party to default or consent to judgment against him. RESTATEMENT (SECOND)OF JUDGMENTS § 70 (1980). Although Antonio's conduct is not proper, we find it does not rise to the level of fraud. Because not only Antonio but the siblings who were signatories to the deed, also chose not to disclose the issue of the deed of gift between themselves to the court, we find no fraud.

Since the parties failed to disclose the issues of title to the properties distributed, that would be a matter for a future quiet title action. Anyone who did not participate in the Decree of Final Distribution or the probate proceeding will not be barred from pursuing future actions challenging the title to the property which was distributed to the heirs. The probate court does not determine title to the properties. The Court will construe the Deed of Gift in a manner that will uphold the validity of the conveyance if possible. *Camacho*, 4 N.M.I. 22.

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[1] The administrator sold a piece of property in the estate to his step daughter without notifying his siblings of the sale. The trial court found the relationship of the defendant Administrator to the plaintiff heir was fiduciary in character. The administrator's breach of his fiduciary duty was sufficient justification for revocation of the Probate Court Order and for remand to that court for a fresh start. *Satti v. Rago*, 441 A.2d 615, 620 (1982), *see O'Connor v. Chiascione*, 33 A.2d 336 (1943).

[2] Arizona has held that extrinsic fraud may consist of deceptive practices by a successful party in purposely keeping his opponent ignorant of the proceedings. *Honk v. Karlsson*, 292 P.2d 455 (1956). California has held extrinsic fraud is present when a decree is produced from probate court by conduct which prevents those from having an interest in the estate from appearing and asserting their rights. *Estate of Starkweather*, 64 Cal. App. 4th 580 (1998).

III. Was Antonio Estopped by His Own Actions From Claiming Lot 016 B 03?

[16]The lower court found that Antonio was estopped from claiming sole ownership to the subject Lot by his own actions in the administration of the estate of Isabel L. Piteg and in leasing the property to Tokai, Saipan, Inc. because the Appellees detrimentally relied on him. Decision and Order at 4.

The doctrine of estoppel requires:

> (1) the party to be estopped must know the facts;
> (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended;
> (3) the party asserting estoppel must be ignorant of the true facts;
> (4) the party asserting estoppel must rely on the former's conduct to his injury.

In re Blankenship, 3 N.M.I. 209, 214 (1992).

[17,18]Equitable estoppel is invoked where a party relies on the statement of the other party and is prejudiced thereby. *Sartain v. Dixie Coal & Iron Co.*, 266 S.W. 313, 317 (1924). Equitable estoppel requires a repudiated statement or a change of position and detrimental reliance.[3] There must be ignorance of the truth and absence of equal means of knowledge of it by the party who claims the benefit of estoppel. *Int'l Sport Divers Ass'n, Inc. v. Marine Midland Bank, N.A.*, 25 F. Supp. 2d 101,108 (1998).

With full knowledge of the facts, Antonio took the position in the prior proceeding in the *Estate of Isabel L. Piteg* that the Lot was an asset of the estate. Antonio, as administrator, sought and obtained a court decree, which was agreed to by all the heirs, and which "distributed, conveyed and confirmed" the property to the Appellees. The Second Amendment to Ground Lease was signed by the parties sometime between April and June 1995, but not until September 1995, did Antonio claim he also was entitled to the land and rent payments.

[19]We find Appellees relied on Antonio not enforcing the Deed of Gift and were ignorant of his true intention. Antonio's conduct in having the Appellees sign the lease with Tokai Saipan, Inc., in addition to obtaining their signatures for the Lease amendment, augmented Appellees' reliance that

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[3] Equitable estoppel concerns the brand of estoppel placed on people who make false representations or conceal material facts, with knowledge of the facts, to a party ignorant of the truth of the matter, with the intention that the other party should act upon it, and with the result that such a party is actually induced to act upon it, to his damage. BLACK'S LAW DICTIONARY, 632 (rev. 4th ed.).

Antonio would not be enforcing the deed. Parties must accept the consequences of the position they assume; they are estopped to deny the reality of the state of things which they have made to appear to exist, and upon which others have been led to rely. *Casey v. Galli*, 94 U.S. 673, 24 L.Ed. 168, 170 (1877).

[20]However in applying estoppel to the ownership of the Lot, an element of estoppel is lacking. The party asserting estoppel must be ignorant of the facts. The heirs of Isabel L. Piteg who signed the deed of gift can not be held ignorant of the existence of the deed. The absence of this element is fatal to Appellees' contentions for estoppel, thus Antonio is not estopped from claiming ownership of Lot 016 B 03. However, we partially estop Antonio as to the lease. Appellees are entitled to lease payments, if any, for the remainder of the terms of the lease with Tokai Saipan, Inc. attributable to Lot 016 B 03. Lease profits are to be disbursed in accordance with the provisions of the operative lease with Tokai Saipan, Inc. Upon conclusion of the current obligations to the Lot, Antonio will be owner of the Lot per the Deed of Gift.

CONCLUSION

The holdings of this case are unique to the particular facts and circumstances of this case. We **REVERSE** the Superior Court as to the holding Antonio is barred by res judicata and we **REVERSE** the holding that Antonio waived his right to enforce the Deed of Gift. We partially **AFFIRM** as to estoppel. Antonio is not estopped from claiming the Lot, but is estopped to claiming the sole profits from the existing lease.

So Ordered this 17th of February, 2000.

/s/ Miguel S. Demapan
MIGUEL S. DEMAPAN, Chief Justice

/s/ Juan T. Lizama
JUAN T. LIZAMA, Justice *Pro Tem*

/s/ John A. Manglona
JOHN A MANGLONA, Justice *Pro Tem*