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

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| LUIS C. BENAVENTE,<br><br>Plaintiff/Appellant,<br><br>v.<br><br>MARIANAS PUBLIC LAND CORPORATION, and PACIFIC RESORT DEVELOPMENT, INC.,<br><br>Defendants/Appellees,<br><br>v.<br><br>JOAQUIN C. BABAUTA,<br><br>Intervenor. | **APPEAL NO. 96-049**<br>**CIVIL ACTION NO. 94-0523**<br><br>**OPINION** |

Argued and submitted December 14, 1999

**Cite as: *Benavente v. Marianas Pub. Land Corp.*, 2000 MP 13**

Counsel for Appellant: Douglas F. Cushnie, Saipan

Counsel for Appellees:

(Marianas Public Land Corporation) Brian W. McMahon
(Bret Lubic)
Law Offices of Brian W. McMahon, Saipan

(Pacific Resort Development, Inc.) Richard W. Pierce
White, Pierce, Mailman & Nutting, Saipan

(Intervenor, Joaquin C. Babauta) Kenneth Govendo, Saipan

BEFORE: LIZAMA, TAYLOR and BELLAS[1], Justices *Pro Tem*.

LIZAMA, Justice *Pro Tem*:

**[1]**Luis C. Benavente ("Benavente") appeals the Superior Court's October 11, 1996 decision which canceled a proposed land exchange and rejected Benavente's claim for restitution against Marianas Public Land Corporation ("MPLC"). In the same decision the court canceled a Deed of Warranty

[1] Justice Pro Tem Bellas is replacing Justice Pro Tem Villagomez due to illness.

**FOR PUBLICATION**

between Benavente and Joaquin C. Babauta ("Babauta") and awarded punitive damages in favor of Babauta. We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands. We amend and reverse in part.

## ISSUES PRESENTED AND STANDARDS OF REVIEW

I. **[2]**Whether MPLC has a duty to consummate a land exchange transaction with Benavente. Whether the trial court correctly determined that MPLC did not have a duty to enter into a land exchange is a mixed question of law and fact reviewed *de novo*. *See Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323, 326 (1996).

II. **[3,4]**Whether the Superior Court erred in canceling the real property transfer between Benavente and intervenor Babauta. The enforceability of a deed is reviewed *de novo*. *See Santos v. Matsunaga*, 3 N.M.I. 221, 225 (1992). The issue of whether the trial court properly determined that real property was fraudulently obtained is reviewed for clear error. *See Pangelinan v. Itaman*, 4 N.M.I. 114, 117 (1994).

III. **[5,6]**Whether Benavente is entitled to restitution from MPLC for improvements on the land and from Babauta for the consideration paid on the Warranty Deed. We review the Superior Court's decision not to award restitution under the abuse of discretion standard. *See Camacho*, 4 N.M.I. at 325. The underlying findings of fact are reviewed under the clearly erroneous standard. Thus, we will not reverse unless, after reviewing all the evidence, we are left with a firm and definite conviction that a mistake has been made. *See Id.*

## FACTUAL AND PROCEDURAL BACKGROUND

Benavente filed the present lawsuit against MPLC[2] over a proposed land exchange agreement which was never consummated. MPLC proposed to give Benavente certain public land at Ladder Beach, more particularly described as Lot No. 036 L 10, containing an area of 2,508 m² ("the Ladder Beach Property") in exchange for certain private land situated in Papago and Tanapag. Part of the property which Benavente sought to exchange belonged to Babauta. Babauta intervened in this action for the purpose of reclaiming title to the property on the basis that Benavente fraudulently acquired the land. Pacific Resort Development, Inc. was made a party defendant based upon possible interest it may have had in the government property. *Benavente v. Marianas Pub. Land Corp.*, Civ. No. 94-0523 (N.M.I.

[2] In August 1994, pursuant to Executive Order No. 94-3 § 306(a), MPLC was dissolved and transferred its functions to the Division of Public Lands of the Department of Lands and Natural Resources, pursuant to N.M.I. Const. art XI; § 4(f); on April 18, 1997 Executive Order No. 94-3 was repealed to become Public Law 10-57.

Super. Ct. Oct. 11, 1996) (Findings of Fact and Conclusions of Law at 4) ("Judgment").

*Benavente and Babauta*

Babauta intervened to rescind a transaction covering tract 22582-R/W. Babauta claims Benavente offered to assist Babauta in exchanging a portion of land in Papago ("the Papago Property"[3]) with MPLC on the condition that once the land exchange was completed, Benavente could purchase 908 square meters of whatever land Babauta received pursuant to the exchange for the price of $50 per square meter, or a total sum of $45,500. In furtherance of this alleged agreement, Babauta accepted Benavente's offer to make payments in advance. Subsequently, Benavente stated he would pay $10,000 if Babauta would first sign a document. On August 16, 1991, Babauta signed a document which was a warranty deed giving Benavente title to Babauta's Papago property.

It is not disputed, that as of the date of trial, the total value of cash, materials and services which Babauta received from Benavente was $34,018.05. A Mazda pick up truck worth $9,451 was repossessed by the Bank of Hawaii, thus $11,381.95 is still owed to Babauta. The Superior Court found that since Babauta does not know how to read English, he did not understand what he signed was a warranty deed relinquishing his property. Therefore, the court held the warranty deed was null and void.

*Benavente and MPLC*

On November 13, 1990, then Governor Lorenzo I. De Leon Guerrero ("Governor Guerrero") sent a letter to MPLC certifying that Benavente's Tanapag property[4] was needed by the government to be preserved as a public park. Shortly thereafter, MPLC and Benavente entered into negotiations for a land exchange. See Judgment at 3.

Initially, MPLC Land Exchange Officer Jesus Cabrera showed Benavente the Ladder Beach property. On October 3, 1991, Governor Guerrero sent another certification letter stating that the government needed Benavente's Papago property, including property he had acquired from Babauta.

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[3] The Papago property is more particularly described as Tract No. 22582-R/W, containing an area of 908 square meters.

[4] The Tanapag property is more particularly described as Lot No. 005 B15, containing an area of 182 $m^2$ more or less.

Governor Guerrero then certified Tract Nos. 22520-1R/W, 22520-3R/W, and the Papago property as necessary for public use. Except for Tract No. 22520-3R/W, all of this land abuts a public road. See Judgment at 4.

MPLC tried to incorporate the Papago and Tanapag properties into one land exchange. Benavente was shown other lots at Ladder Beach, Lot No. 036 L 16, containing an area of 26, 919 m², and Lot No. 036 L 19, containing an area of 2,960 m².

In December 1991 and January 1992, notice of MPLC's intention to enter a land exchange was published in the Marianas Variety. The publication indicated that Lot Nos. 22520-1R/W and 22520-2R/W would be exchanged for Lot Nos. 036 L 16 and 036 L 19. However a Certification for Land Exchange had not been issued in connection with Lot. No. 22520-2R/W.

On April 2, 1992, Benavente leased all of Tract No. 22520 R/W for 55 years to Tokai Saipan, Inc. Benavente spent approximately $200,000 in out of pocket expenses to improve the Ladder Beach property.

On September 12, 1993, MPLC and Pacific Resort Development, Inc. entered into a Memorandum of Understanding in which MPLC promised to lease 88.2 hectares of public land in the Obyan/Ladder Beach area, Lot Nos. 036 L 16 and 036 L 19, which included part of the property Benavente was to receive in his exchange, which brought PRDI into the present law suit.

Three days before trial, Governor Froilan C. Tenorio decertified the government's need to acquire Lot No. 22520-3R/W, stating in a memorandum issued to the Director of the Division of Public Lands that, contrary to Governor Guerrero's October 3, 1991 certification letter, the property was not needed for a public purpose; therefore, the original certification was canceled.

The matter proceeded to trial, where the Superior Court: (1) found that Benavente committed fraud on Babauta by purposely misrepresenting to him the true nature of the warranty deed signed on August 16, 1991; (2) determined that the government was not obligated to consummate the proposed land exchange as it does not meet the conditions of the Public Purpose Land Exchange Authorization Act of 1987 ("the Exchange Act") because the notice of land exchange as required by 2 CMC § 4144(b)(3) was in error; and (3) denied Benavente restitution for the value of the improvements made on the Ladder Beach Property because his decision to improve the Ladder Beach Property *before* he received title cannot be

characterized as an act of good faith to be entitled to restitution. The court gave restitution to Benavente which was offset by an equal award to Babauta for punitive damages. From this judgment, Benavente timely appealed.

## ANALYSIS

### I. Did MPLC Have a Duty to Consummate the Land Exchange?

**[7]**The law of land exchanges is found at 2 CMC § 4141, et seq. which is the codification of the Public Purpose Land Exchange Authorization Act of 1987 ("Act"). To carry out the purposes of the Act, MPLC enacted regulations in 1988, which are found in the Commonwealth Register, Volume 10, pages 5418 through 5428, January 18, 1988. To obtain land by exchange, the Governor must certify the public purpose for the exchange. See 2 CMC § 4143 (d)(2), Act at 4(A). After other steps have been taken, including surveying and evaluation of the parcel or parcels to be exchanged (See Act at 4(B),(C)), the Governor/ MPLC must make a "written offer" to the owner. See Act at 4(E). If the offer is accepted, MPLC and the owner must enter into negotiations for a final offer. See Act 4(G). The owner's agreement to the written or final offer, must be documented in writing, stating the land value to be exchanged and the public parcel the owner agrees to acquire. See Act at 4(G)(5) The document must contain the signatures of the owner and the MPLC negotiator. *Id.* A notice of exchange must be published and a public hearing on the exchange must be held. See 2 CMC § 4144(b)(3), Act at 4(H). After successful conclusion of the negotiations and publication, MPLC shall prepare a Quitclaim Deed of Land Exchange. See Act 4(I)(1). Upon completion of the surveys and Quitclaim Deed, MPLC must arrange for the execution of the deed, subject to the final approval of the Board of Directors. See Act at 4 (I)(3).

Benavente argues MPLC should be estopped from repudiating the land exchange based on the principles of equitable estoppel. Benavente argues that, contrary to the Superior Court's findings, the exchange has already been consummated in fact and in law by MPLC's conduct. That is, (1) the property has already been selected and surveyed; (2) the publications of notice were properly prepared together with an exchange deal; and (3) the exchange is subject to the final approval of the board of directors for which no minutes are presently available which show either a rejection or approval of the exchange by the board. In addition, Benavente claims the Superior Court erred when it ruled that the "value for value" test of the Exchange Act was not met, and that the proposed lands for exchange were not comparable and

similar in value.

*A. Equitable Estoppel against the Government*

**[8]**The U.S. Supreme Court has expressly left open the issue of whether estoppel may lie against the government: "[T]here are cases in which the public interest in ensuring that the Government can enforce the law free from estoppel might be outweighed by the countervailing interest of citizens in some minimum standard of decency, honor, and reliability in their dealings with the Government." *See Heckler v. Community Health Serv. of Crawford County, Inc.*, 467 U.S. 51, 60-61, 104 S. Ct. 2218, 2224, 81 L. Ed. 2d 42 (1984). The government may not be estopped on the same terms as a private litigant. *Id*. at 60.

**[9,10]**The general rule is that estoppel is rarely applied against the government. However, estoppel may be invoked against the government in certain circumstances, such as where necessary to prevent manifest injustice. See *Rasa v. Department of Lands and Resources, Div. of Pub. Lands*, App. No. 97-012 (N.M.I. Sup. Ct. July 24, 1998) (opinion at 4); *see also In re Blankenship*, 3 N.M.I. 209, 214 (1992). Estoppel is available when the actions of the government or its representative rise to a level of "affirmative misconduct," and the doctrine will not be invoked where it would defeat operation of policy adopted to protect the public. *See Rasa* at 4*; In re Blankenship*, 3 N.M.I. at 214.

**[11**Before the Government will be estopped, two additional elements must be satisfied beyond those required for traditional estoppel. *See Watkins v. U.S. Army*, 875 F.2d 699, 707 (9th Cir. 1989). A "party seeking to raise estoppel against the government must establish 'affirmative misconduct going beyond mere negligence'; even then estoppel will only apply where the government's wrongful act will cause a serious injustice, and the public's interest will not suffer undue damage by imposition of the liability." *See Id*.

*1. Affirmative Misconduct Beyond Mere Negligence*

**[12]**There is no single test for detecting the presence of affirmative misconduct; each case must be decided on its own particular facts and circumstances. *See Lavin v. Marsh*, 664 F.2d 1378, 1382-83 n.6 (9th Cir. 1981). Affirmative misconduct does require an affirmative representation or affirmative concealment of a material fact by the government, *See United States v. Ruby Co.*, 588 F.2d 697, 7033-04 (9th Cir. 1978), *cert. denied*, 442 U.S. 917, 99 S. Ct. 2838, 61 L. Ed. 2d 284 (1979), although it does

not require that the government intend to mislead. *See Jablon v. United States*, 657 F.2d 1064, 1067 n.5 (9th Cir. 1981).

The lower court found that MPLC did not have a duty to complete the land exchange because the exchange did not comply with the land exchange rules. The appraisals were not accepted by the Board of Directors, and Benavente conveyed part of his land to his children and leased part of it to Tokai. Judgment at 13. Below we will explore the conditions of land exchange to determine whether MPLC's actions constituted in affirmative misconduct.

*a. Public Purpose*

**[13,14,15]** To obtain land by exchange, the Governor must certify the public purpose for the exchange. See 2 CMC § 4143. The Commonwealth code provides that no public land shall be exchanged for private land or as compensation for the taking of private land unless the exchange is for the accomplishment of a public purpose specifically defined in section 4143(e). See 2 CMC § 4144(b)(1). Section 4143 (e)(2) defines "public purpose" as "any public use or purpose determined by the governor."

**[16]** In another case with issues similar to those in the present lawsuit against MPLC, this Court refused to estop the government. *See Rasa v. Department of Pub. Lands and Resources, Div. of Pub. Lands*, App. No. 97-012, (N.M.I. Sup. Ct. July 24, 1998) (Opinion).[5] In *Rasa*, plaintiffs sought specific performance of a land exchange made with the government. Just as in the case at bar, Governor Guerrero had originally certified that the land was needed for public use, and Governor Tenorio reversed the certification. Here, the trial court determined that MPLC did not have a duty to enter into a land exchange with Benavente because the proposed exchange did not accomplish a public purpose. A memorandum from Governor Froilan C. Tenorio stated that Tract No. 22520-3R/W was not needed for public use. Judgment at 7.[6] The court will not normally disturb the discretionary decision of a public officer absent a

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[5] "Governor Tenorio decertified the proposed land exchange after relying upon the opinions of licensed professional engineers. This did not amount to affirmative misconduct. The Superior Court relied upon the declarations of the licensed engineer, as well as the Governor's decertification, in ruling that a public purpose did not exist to consummate the proposed land exchange." *Rasa* at 4-5.

[6] This case is distinguishable from *Rasa* where we refused to estop the government from not consummating a land exchange. In *Rasa* the Governor relied on the declarations of licensed engineers to support the government's cancellation of the proposed land exchange. Here we are not questioning the Governor's decision to decertify the property, but instead MPLC's inability to effectively communicate with Benavente during the entire thwarted land

showing of an abuse of discretion, an arbitrary decision or fraud. *Tenorio v. Tenorio*, Civ. No. 95-0390 (N.M.I. Super. Ct. Nov. 6, 1995) (Memorandum Decision and Order); *Lao Shreiber v. United States*, 129 F. 2d 836 (7th Cir. 1942).

**[17]**If there is no public purpose to be served, the government is not legally or equitably bound to complete the exchange. *Rasa* at 4. Accordingly, if the Governor found there was no public purpose to be accomplished in regards to Tract No. 22520-3R/W, we will not find fault. It was within the Governor's discretion to declare that Tract No. 22520-3R/W was not needed for a public purpose. However, Tract No. 22520-3R/W was just one of the proposed land exchange lots.

*b. Value for Value*

**[18]**A land exchange must be made on a "value for value" basis.[7] See 2 CMC § 4144 (b)(2). The lower court found that based on appraisal reports which were received into evidence, and the testimony of two appraisers, the land exchange which Plaintiff sought to enforce did not meet the "value for value" requirement. Judgment at 6-7.

**[19,20]**The parties did not furnish this Court with a transcript of the proceedings below. The Commonwealth Rules of Appellate Procedure provide:

> If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.

Com. R. App. P. 10 (b) (2). It is incumbent upon the appellant to assist in assembling the available record on appeal and comply with rule 10(b)(2). *See In re Estate of Deleon Castro*, 4 N.M.I. 102, 108 (1994). In that case, the Court explained:

> [W]e must be free to review the entire relevant evidentiary record to determine whether or not it supports the court's finding or conclusion. An appellant should not feel free to argue that a court's decision is not supported by the evidence without proffering that very evidence before this Court in its excerpts of the record.

*Id.* at 108.

**[21]**The appellate court accords particular weight to a trial judge's assessment of conflicting and

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exchange process.

[7] The land to be exchanged must be of comparable value based on an independent appraisal made by a licensed appraiser at approximately the same time for all land parcels to be exchanged. See 2 CMC § 4144(b)(2).

ambiguous evidence. *Manglona v. Kaipat*, 3 N.M.I. 322, 336 (1992). Without the evidence and testimony, we defer to the lower court's finding that the exchange which Benavente seeks to enforce does not meet the value for value requirement.

*c. Publication Requirement*

In addition, the publication required for the proposed exchange was incomplete. Judgment at 4. The publication did not mention Tract No. 22520-3R/W, the Papago property or Lot No. 005 B15 as part of the private land to be acquired, nor did it mention Lot. No. 036 L 10 as part of the public land to be exchanged. Judgment at 4-5.

*d. Approval by the Board of Directors*

The lower court found that another reason the land exchange was conditional was that there was no final approval by the board of directors. Until the board has approved the exchange, no exchange is possible and the government is not bound. Judgment at 10. Benavente argues board approval was given prior to publication of the notice of exchange, since publication would not have occurred unless such approval had been granted. He further points out there is no evidence that the Board of Directors kept minutes of their meetings which would show if approval had issued to the land exchange.

**[22]**It is axiomatic that an agency must comply with its own rules. *See Vitarelli v. Seaton*, 359 U.S. 535, 79 S. Ct. 968, 3 L. Ed. 2d 1012 (1959). If there has been any failure to comply with MPLC regulations, it falls with MPLC. These items are all within the control of MPLC. No where are there records which show the proposed land exchange was ever approved by the MPLC board of directors; thus, at all times relevant to this lawsuit, the proposed land exchange never satisfied the requirements of the Act.

**[23]**However, in dealing with a government agency, it is the applicable rules and regulations that determine the point at which a contract is enforceable. Judgment at 10. If the rules that were promulgated to accomplish the land exchange were not followed, we are hesitant to allow the exchange to take place.

2. *Weighing the Manifest Injustice to Benavente Against the Possibility of Damageto the Public Interest*

**[24]**Manifest injustice must be present for governmental estoppel to be applied. *See Rasa, supra,* at 4. Benavente maintains he already accepted MPLC's commitment to give him the Ladder Beach property by improving the land; therefore, he claims unless the government is estopped from denying the existence of an effective and binding agreement, he will suffer manifest injustice. Judgment at 12. We disagree. When he improved the Ladder Beach land without having title, the only document he had establishing property rights was a letter from MPLC's Executive director, William R. Concepcion, which stated in relevant part: "Please be further advised that the Corporation is in the process of completing the stipulated requirements and barring any unforeseeable obstacles, the Quitclaim Deed of Exchange will be executed in the very near future."[8]

**[25,26,27]**The record demonstrates Benavente took a risk when he began improving property that was "in the process" of being transferred. Benavente had an obligation to know the law and regulations on land exchange. *See In re Blankenship,* 3 N.M.I. at 215. The letter stated that the exchange would take place barring "unforseen circumstances." The letter does not reflect a binding exchange agreement between the parties. Benavente did not exercise sound judgment in improving the lot to result in manifest injustice. "The doctrine of equitable estoppel does not erase the duty of care and is not available for the protection of one who has suffered loss solely by reason of his own failure to act or inquire." *Hampton v. Paramount Pictures Corp.,* 279 F. 2d 100, 104 (9th Cir. 1968). Conduct by the government's agent could preclude the government's rights, we are not persuaded this was done here. In the context of contracting with a government agency, a person may not reasonably rely on the conduct of government agents when such conduct is contrary to the law. *See Heckler v. Community Health Services*, 467 U.S. 51, 63, 104 S. Ct. 2218, 2225, 81 L.Ed.2d 42, 54 (1984). Although the Court understands Benavente's

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[8] The Letter read:

> To Whom it May Concern:
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> Please be advised that Mr. Luis C. Benavente and the Marianas Pubic Land Corporation have reached an agreement to land exchange a parcel of his land situated in Tanapag Beach Area and Papago identified as Lot/Tract Nos. 005 B15; 22520-2 R/W/A, B and C; 22520-1 R/W D and E.
>
> This agreement is to follow a Quitclaim Deed of Exchange from the MPLC fulfilling all the requirements stipulated under P.L. 5-33. Please be further advised that the Corporation is in the process of completing the stipulated requirements and barring any unforeseeable obstacles, the Quitclaim Deed of Exchange will be executed in the very near future. The Proposed Public Land Exchange are [sic.] Lot. Nos. 036 L 10, 036 L 19 and 036 L 16 containing an area of 32,387 square meters.

frustration in attempting to complete a land exchange with an agency that continually failed to follow its own procedures, such conduct does not result in the type of manifest injustice that will justify estopping the government.[9]

B. *Traditional Elements of Estoppel*

Having concluded that Benavente has not satisfied the elements of estoppel against the government, we need not decide whether the traditional elements of estoppel[10] are present.

## II. Did the trial Court Correctly Cancel the Transfer Between Benavente and Babauta Based on Fraud?

The lower court found the transaction between Babauta and Benavente was fraudulent because Babauta did not understand the nature of the document he signed. Judgment at 2.

**[28,29]**Courts will construe a deed in a manner that will uphold the validity of the conveyance if possible. *See In re Estate of Camacho*, 1 CR 395, 399 (C.T.C. 1983). Where the language of a deed is plain, certain and unambiguous, it should be given its plain construction. An unambiguous instrument conveying property must be construed to its terms. *Tarope v. Igisaiar*, 3 CR 242, 246 (Trial Ct. 1987) (rejecting plaintiff's claim of interest in property, where deed clearly listed plaintiff only as witness to transaction); *Hardin v. Hardin*, 979 S.W.2d 314, 316 (Tenn. Ct. App. 1998) (holding "unless a deed is ambiguous, the intention of the grantor is to be determined from the four corners of his deed"). Where the language of a writing is plain and precise, a court can, as a matter of law, establish the intentions of the parties as declared in the writing. *Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303, 310 (1992). When the grantor's intentions can be ascertained from the face of the instrument, the law assumes the parties intended

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[9] Even assuming the government agencies have been negligent in failing to consummate the Land Exchange or assert claims, the great interests of the government in preserving land are not to be forfeited as a result. *See United States v. State of California*, 67 S. Ct. 1658, 1669, 332 U.S. 19, 91 L. ed. 1889 (1947). MPLC and the governor had the responsibility to safeguard the public land for all people.

[10] The Court in *In re Blankenship*, 3 N.M.I. 209 (1992) set out four elements to establish estoppel:

> (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.

*Id.* at 214.

what is plainly and clearly set out. *Vines v. McKenzie Methane Corp.*, 619 So.2d 1305, 1309 (Ala. 1993).

The record contains a copy of the deed. E.R. 36- 38. The title "Warranty Deed" is typed on the first page. The deed names Babauta as grantor and Benavente as grantee, locates the property by legal description, notes the consideration of $45,000, and is signed and dated by Babauta. The document was signed by a notary public. As such, it represents a valid deed. Also in the record are receipts which account for $43,469.05 of money and material paid to and accepted by Babauta. E.R. 39-40.

**[30]**The lower court, in finding fraud, held that Babauta did not understand the document he signed was a warranty deed. Judgment at 2. Strictly speaking, the burden of proving fraud or misrepresentation is upon the party aggrieved thereby. However, when the relation between the contracting parties suggests an unfair advantage has been taken by either party, the transaction is presumably fraudulent. *See Oatman v. Hampton*, 256 P.529 (1927). Here, there is no special relation between the parties to presume fraud, nor is Babauta's mental capacity such that he did not appreciate what he was signing.

**[31]**A misrepresentation is fraudulent if the maker:

(1) knows or believes that the matter is not as he represents it to be,
(2) does not have the confidence in the accuracy of his representation that he states or implies, or
(3) knows that he does not have the basis for his representation that he states or implies.

*Ada v. Sadhwani's, Inc.*, 3 N.M.I. 303 (1992), RESTATEMENT (SECOND) OF TORTS § 526 (1977).

**[32]**Whether Babauta understood this document's importance is not relevant. The grantor was charged with the responsibility of acquainting himself with the effects of the deed before he signed it. *See Johnson v. Estate of Shelton*, 754 P.2d 828, 830 (1988). One who executes a written contract is presumed to know its contents and assent to them; ignorance of the contents is not grounds for relief from liability. *See id.* Thus, the relevant inquiry is not whether Babauta understood what he was signing, but whether Benavente misrepresented the true nature of the document. A finding of fraud would require that Benavente lied about the effect of the document Babauta signed. The evidence was lacking in this respect. We find nothing in the record as presented which explains to the Court the fraud involved.

Babauta's complaint alleges Benavente was to help with a land exchange. E.R. at 21. In return, Benavente would have the right to buy part of the land Babauta received in exchange from MPLC. The

trial court found that Babauta never intended to convey outright his right of way to Benavente. See Judgment at 2. The money Benavente was paying Babauta pursuant to the warranty deed was allegedly payment for property that Babauta was to receive in exchange for his tract 22582 R/W. E.R. at 21. Babauta believed he was signing a receipt for payment. Judgment at 2.

**[33]**The land exchange with the government has not taken place, it is considered a future event which would not be actionable as fraud. To be actionable, the alleged false representation must relate to a past or existing material fact, not the occurrence of a future event. *See TSA Intern., Ltd. v. Shimizu Corp.*, 990 P.2d 713 (Hawaii, 1999). Fraud cannot be predicated on statements which are promissory in nature, or which constitute expressions of intent. An actionable representation cannot consist of mere broken promises, unfulfilled predictions or expectations, or erroneous conjectures as to future events. This is true even if there is no excuse for failure to keep the promise, and even though a party acted in reliance on such promise. *See Stahl v. Balsara*, 587 P.2d 1210, 1213 (Hawaii, 1978).

Property rights are one of the greatest resources for the people of this Commonwealth. Through our Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, our people incorporated a recognition of the scarcity of land and its importance in local and traditional customs. *See Diamond Hotel v. Matsunaga*, 4 N.M.I. 225 (1995). While the level of sophistication of people of Northern Marianas descent has increased, so have the complexities of the legal and economic dynamics behind purchasing and leasing land. *See id.*

**[34]**In light of the evidence, we hold that the lower court's findings of fraud were clearly erroneous. There is a serious danger in canceling deeds and the effect it has on land issues. Parties should be discouraged from attempting to violate or hold null and void existing deeds to gain access to more promising opportunities if they present themselves. Persuasive policy considerations of the economic value we place on our land reinforce our decision to uphold the validity of the deed.

## III. Is Benavente Entitled to Restitution From MPLC and Babauta?

### A. *Restitution from MPLC*

**[35]**Benavente asserts that if the trial court's decision is left undisturbed, he will lose approximately $200,000 in improvements he made on government land, based upon repeated government representations

that the proposed land exchange would be consummated. Benavente claims he spent $200,000 improving the exchange property at Obyan with the government's knowledge. One who improves the real property of another is entitled to restitution if the improver:

> (1) is in possession of the property adverse to the owner,
> (2) possesses under color or claim of title, and
> (3) constructs the improvement in good faith.

*Westenberger v. Atalig*, 3 N.M.I. 471, 476 (1993).

**[36]**"Under any definition of good faith, actual notice of another's interest negates the good faith necessary to recover in restitution." *See Fouser v. Paige,* 612 P.2d 137, 141 (Idaho 1980). The trial court found that since Benavente's claim to the land was not made in good faith, he was not entitled to restitution. He improved the property based upon representations that the property would be transferred to him. Benavente's decision to improve the land is not an act of good faith because he knew the title to the land had never passed to him. Therefore the trial court's refusal to grant restitution is proper.

B. *Restitution from Babauta*

Benavente was awarded restitution in the amount of $34,018.05 for the cash, material and services he provided to Babauta under the warranty deed. This award was negated by an equal award for punitive damages in favor of Babauta. This Court finds the plaintiff did not establish all the legal elements for fraud, thus we reverse the award for punitive damages.

## CONCLUSION

For the foregoing reasons, we **AFFIRM** the lower court's finding that MPLC had no duty to consummate the land exchange with Benavente. We **AFFIRM** the lower court's denial of restitution from MPLC to Benavente.

We **REVERSE** the lower court's finding that Benavente committed fraud as Babauta did not meet the elements to prove fraud, thus the award of punitive damages and the offset for restitution to

Benavente are also **REVERSED**.

The warranty deed will stand. Benavente has not given Babauta the full amount of $45,400.00 as set forth in the warranty deed. Babauta has received the total value of cash, material and services amounting to $34,018.05. Benavente shall therefore tender the remainder of the purchase price owed within thirty days of this judgment.

Dated this 13th day of September, 2000.

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

/s/ Timothy H. Bellas
TIMOTHY H. BELLAS, Justice *Pro Tem*

/s/ Marty W.K. Taylor
MARTY WK TAYLOR, Justice *Pro Tem*