

Surveys, dated June 13, 1971 (said map erroneously refers to court civil action, Case No. 519 rather than 516) is hereby adjudged to be the individual fee simple land of Gillian Tellames and the filing of a copy of this Judgment with the Clerk of Courts, Palau District, shall be deemed to satisfy the requirements of Section 801(a) of the Palau District Code.

No costs are allowed.

LUIS CEPEDA CRISOSTIMO, EMILIA CRISOSTIMO LIZAMA, CONCEPCION CRISOSTIMO BABAUTA, MARIA CRISOSTIMO PANGELINAN, and all other heirs of the Estate of Jose Crisostimo, deceased, Plaintiffs,

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS and its Alien Property Custodian, Defendants.

Civil Action No. 953

Trial Division of the High Court

Mariana Islands District

June 28, 1974

Action for rescission of land exchange agreement. The Trial Division of the High Court, Turner, Associate Justice, held that where plaintiffs had used the land for fourteen years without making a complaint the action was barred by laches.

1. Civil Procedure—Federal Rules

Federal procedural rules are not applicable in the Trust Territory when they conflict with territorial rules.

2. Appeal and Error—Late Appeal

Claim that Land Title Officer's determination of ownership erroneously found the land to contain less area than it actually did would not be considered where time for appeal from the determination had passed.

3. Executors and Administrators—Transfer of Assets—Rights of Transferee

Territorial government had right to assume that trustee of decedent's property would comply with the law and obtain the consent of the heirs to the land to the exchange of the land, with the government, for land owned by the government, as desired by the government.

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4. Agency—Rights of Third Party

If a constructive trust arises out of exchange of private land, through a person acting for the owners, for government land, and the trust runs in favor of the private landowners, the private landowners cannot have rescission if they are guilty of laches or ratified the exchange by acceptance and use of the government's land.

5. Real Property—Sales—Duress

Where government, after asking trustee of land beneficiaries received from decedent if he would exchange the land for government land, waited three years before the exchange was effected, and none of the beneficiaries raised an objection during that time, and no evidence of duress was put forth, it would not be found, at beneficiaries' action seeking a return to them of the land they had exchanged, that the government had applied pressure to the trustee.

6. Fraud—Elements

False representation of a material fact is one of the elements of fraud.

7. Laches—Particular Cases

Where trustee of land beneficiaries received from decedent did not claim any undue influence in his exchange of the land for government land, and beneficiaries brought action to rescind the exchange fourteen years after the exchange, and after the death of the trustee, and they had used the land and made no prior complaint, their claim was barred by laches.

Assessor:

IGNACIO V. BENAVENTE, *District
Court Presiding Judge*

Interpreter:

HEDWIG HOFSCHEIDER

Reporter:

ELSIE T. CERISIER

Counsel for Plaintiffs:

Micronesian Legal Services Corporation, by DONALD JUNEAU, and SAMUEL C. WITHERS, and DANIEL AQUINO of Counsel.

Counsel for Defendants:

CARLOS H. SALII and EMMETT M. RICE

TURNER, *Associate Justice*

Plaintiff heirs of Jose Crisostimo filed their complaint against the Trust Territory, December 4, 1970, to which the defendant-government answered with a general denial and three affirmative defenses. These were: failure to state a claim upon which relief can be given; the defend-

ants are sovereign and cannot be sued without their consent and have not waived immunity; that plaintiffs' claim is barred by laches.

A pre-trial hearing was held, September 1, 1972, at which time the government orally moved to dismiss. Thereafter, May 10, 1973, the government filed a written motion to dismiss based on the grounds that: (1) This is a claim against the government occurring prior to September 23, 1967, and is therefor barred by 6 TTC 251(b); (2) the court lacks jurisdiction because the claim for rescission is based upon an act or omission of a government employee and the action is prohibited by 6 TTC 252(2); and (3) failure to state a claim for relief. Supporting and opposing memoranda were filed by both sides. No hearing was held and subsequently the court proceeded to trial without ruling on the motion.

[1] After orders for depositions were entered, plaintiffs moved for and were granted leave to file an amended complaint. Except as to form and the dropping of the Alien Property Custodian as a defendant there was no substantial difference between the original and the amended complaint filed August 20, 1973. The government repeated its general denial but did not repeat the affirmative defenses in its answer to the amended complaint. Trial was thereupon held beginning September 4, 1973. Testimony included depositions of two witnesses on Guam taken after conclusion of the proceedings in open court. Counsel for both sides were present for the Guam depositions. Plaintiffs' motion to vacate the order for the depositions in Guam as being "irregular" because it was not in conformity with Federal Rule 23(b), Rules of Civil Procedure, was denied. The court is bound by Trust Territory Rule 13, Rules of Civil Procedure, which permits taking a deposition "at any time." A Federal rule, when in conflict with a Trust Territory rule, is not applicable.

FINDINGS OF FACTS

1. The Saipan District Land Office (Mariana Islands District since 1962) by John P. Raker, Land Title Officer, made its determination of ownership No. 1314, that suburban, North Garapan, Saipan, Mariana Islands, Lot No. 1351, was the property of "the heirs of Jose Crisostimo, deceased, represented by Joaquin Crisostimo, I.D. No. 1175, as Land Trustee. The determination was dated May 10, 1954. Lot 1351, Tochi Daicho designation, was described as comprising 2.1 hectares, more or less.

2. Joaquin Crisostimo (spelled Crisostomo in the title determination) filed claim of ownership with the land office, March 15, 1950. Among other things, he submitted that the lot was owned by the named plaintiffs except Conception, and by Consolacion Cepeda Crisostimo, and Cesilia Cepeda Crisostimo. From the testimony (Deposition Luis Crisostimo, pp. 3-4) it appears that the person listed as plaintiff Conception is the same as the 1950 landownership listing of Consolacion.

3. The statement of Joaquin made with ownership listing also shows that: "Brother using land in East 3 hectares"; "Sister using land in South District. Amelia C. Lizama" and "I am using U.S. Government land in East District about 3 hectares." Also was added: "Will exchange land in East District."

4. "Claimant's Testimony as to Land Ownership" in answer to the question, "Do you wish to move to Garapan, or do you wish to exchange your Garapan lot for Government land in Chalan Kanoa or elsewhere?" Joaquin said, "To exchange for government land." This instrument was dated, March 7, 1954, approximately two months before the title determination and two years before the land exchange.

5. All the living sons and daughters of Jose were given written notice in English and in Chamorro of the title hearing.

6. In a July 9, 1953, interview between Joaquin and the Land Title Officer, he was asked about exchanging the Garapan land for the land being used in the East and South Districts.

7. On June 24, 1954, Joaquin was given a written request to appear at the land office "for the purpose of executing an exchange agreement for Lot 1351, Garapan."

8. June 26, 1954, Joaquin and John P. Raker, entered into an exchange agreement with Joaquin's signature being acknowledged by Olympia Borja, Clerk of Courts.

9. It was not until May 1, 1956, that Joaquin quitclaimed the Garapan lot to the government and received in exchange in behalf of the "heirs of Jose Crisostimo, deceased, represented by Joaquin Crisostimo as Land Trustee," the following land:

(1) Grant of public domain land described as Lot 1, Block 1, Puntan Mutchot Village Subdivision, containing 497 square meters.

(2) Grant of public domain land described as Lot 2, Block 1, Puntan Mutchot Village Subdivision, containing 491 square meters.

(3) Grant of public domain land described as located in Aslito and comprising 40,370 square meters.

10. The government land conveyed to the plaintiffs and the other heirs of Jose comprised 4.14 hectares and the Garapan lot quitclaimed to the government comprised 2.1 hectares.

11. Neither Luis Crisostimo nor his sisters objected to Joaquin representing them before the Land Title Officer. None of them objected to the proposed exchange between the date of the title determination in 1954 and the actual exchange of land parcels May 1, 1956. It was not until

after the exchange was made that Luis informally protested to a land office employee.

12. Lot 1351 was released from military retention in 1959 and on July 1, 1963, Joaquin and Luis wrote a joint letter to the District Land Advisory Board asking to regain possession of the lot, saying, among other things, "since this property is of inheritance from our father, we consider that if we can repossess the property will be of honor to our family."

13. The conflicting testimony between the plaintiffs and the defendant that the plaintiffs were told the land exchange was only temporary and that when the Navy no longer required the land it would be returned to the plaintiffs is resolved against the plaintiffs. No authoritative government officer made such statements to any of the plaintiffs.

14. There was no proof that the exchange of land was tainted by fraud, misrepresentation, mistakes of fact or law, duress, ignorance or undue influence or any other wrongdoing on the part of the government officers and employees.

15. There was no evidence that the heirs did not consent to the exchange by Joaquin as their representative.

16. There was no evidence of any reason justifying the delay between the date of the exchange in 1956 and the bringing of this action in 1970.

17. In addition to representing the heirs in the land matter, Joaquin also represented them when he filed a claim for "all legal heirs" of the mother of the plaintiffs in the amount of \$3,459.25 with the war claims commission for post-secure damage. The claim was dated October 28, 1966.

18. Joaquin was the oldest son of Jose Crisostimo. He died in 1970, the year this action was brought after his death.

19. There was no probative evidence that Joaquin was physically or mentally incompetent and that he did not understand or know what he was doing in representation of his brothers and sisters in the exchange of the land.

OPINION

There are two reasons plaintiffs may not recover. One is based on the facts and the other on the law. The first of the grounds for denial of relief is the insufficiency of the evidence to support the material allegations of the complaint. The other reason is that regardless of the evidence the claim is barred by laches.

The court does not find it necessary to reach a third ground which was briefed and argued by counsel. Defendants moved to dismiss for the reason this is an action against the Trust Territory government on a claim accruing prior to September 23, 1967, and is therefor barred by 6 TTC 251(b). The same statute, 6 TTC 252(b), denies jurisdiction to the court, defendants urged, because the consent to sue the government must not be on a claim based upon a non-negligent administrative act or in the performance of a discretionary function or duty regardless of the exercise of due care.

The court did not rule on defendants' motion to dismiss and the failure to rule may be treated as a denial of the motion. As will be developed subsequently, suit against the government did not depend upon the waiver of immunity found in Title 6 of the Code. Resort to the High Court with implied waiver of governmental immunity is provided in Sec. 9, Land Management Regulation No. 1.

With respect to the first ground for denial of relief, it is necessary to examine the allegations of the complaint as they have been enlarged by plaintiffs' trial memoranda of points and authorities.

[2] The first allegation of fact plaintiff makes is that the land which was held by the District Land Title Officer was owned by the heirs of Jose Crisostimo, who died in 1939, was "erroneously determined" by a Japanese survey to contain 2.6 hectares and by the Trust Territory Land Title Officer to contain 2.1 hectares instead of 4 hectares. If the title determination made by the government, May 10, 1954, after hearing, that Garapan Lot No. 1351 contained 2.1 hectares, rather than 2.6 or 4 hectares, was erroneous, the plaintiffs or their trustee, Joaquin Crisostimo, should have appealed the determination to the court. This, court will not, at this late date, re-examine either the Japanese or the Trust Territory government's decision as to the size of the parcel. The Land Title Officer's decision is binding upon both this court and the plaintiffs and has been since expiration of the one year appeal period provided by Sec. 14, Land Management Regulation No. 1.

The next allegation is the charge that agents of the Naval government represented to the trustee, Joaquin, and to the other heirs of Jose that Lot 1351 would be returned to them "when the military no longer needed to use it." The Land Title Officer who made the ownership determination that Lot 1351 belonged to the Jose Crisostimo heirs and thereafter negotiated the exchange of this parcel for three parcels of government land comprising 4.8 hectares, testified in answer to the following question:

"Q. Did the government or any member of your staff ever inform the people, telling them that the land exchange will be temporary, that when after the original land is no longer needed, that it will be given back to them?

A. To my knowledge, no. When they do come in and ask, "The government, will the government return the land to us after they finished?" and I will tell them, 'No, it cannot be done.' I told them that we would have to have it fee.

Q. It was a full, final, and complete exchange?

A. That is right." (John P. Rayker Deposition p. 14, 15.)

To the same effect was the testimony of another witness, a Chamorro, who negotiated with the private owners for the exchanges on both Saipan and Guam. Questions asked and his answers follow:

“Q. Did you tell them that these exchanges were only temporary?

A. No, this is my order. It says, ‘when you fix things and you give them the land, tell them to start building, and that is their land, and your land belongs to the military now.’

Q. And you made them understand that the land exchange was forever?

A. Yes, forever, because the land was already exchanged.” (Jose Bitanga Deposition p. 11.)

After testifying that he dealt only with Joaquin about the exchange and did not talk to the plaintiff Luis Crisostimo because he was in prison in Guam at the time of the exchange, the Chamorro witness was asked and answered:

“Q. Did Luis ever come to you later after he got out of jail?

A. No.

Q. Did any of the Crisostimo sisters ever complain?

A. No, not that I remember.

Q. Do you recall anyone on Saipan, after the exchange was made, complain to you about the exchange?

A. No.” (Bitanga, p. 12.)

Other than the unsubstantiated statement of the plaintiffs to the effect they were “told” they would get the land back when the Navy released it from the retention area, there was no evidence to support these allegations in the complaint. In fact, the only evidence touching on the “return” allegation is a letter dated, July 1, 1963, signed by Joaquin and Luis, asking for the return of the property as an “honor to our family.” It is noted the land was released from the retention area in 1959 and it was more than four years later that the letter was written. The District Land Advisory Board treated the letter as a request for lease of Lot 1351 but took no action on the request.

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Finally, it is noted the exchange agreement and the deeds executed in accordance with it were for exchanges of fees without conditions subsequent or recitation of reversions.

One other allegation in the complaint should be touched upon. It is: "and said officials threatened Joaquin with punishment if he did not sign the land exchange agreement."

In an interview between the trustee, who was appointed in 1950 when he filed claim for the heirs of Jose, and the Land Title Officer on July 9, 1953, a full year before the title determination and three years prior to the exchange, the trustee was asked about an exchange. He answered that he and his sister, Emilia, were using government land in the East and South district (the land actually exchanged three years later).

At the title determination hearing, March 7, 1954, the trustee signed an interview form which contained an inquiry as to exchanging the Garapan lot for government land elsewhere. Joaquin indicated his willingness to exchange land. There was ample time for the other heirs to object to the exchange in the two years between the title determination and the consummation of the agreement.

This review of the evidence is given to demonstrate that the acts of the government officers "in obtaining and inducing the assent of Joaquin Crisostimo to the land exchange" clearly did not support the allegations that the acts constituted: "fraud, misrepresentation, mistakes of law, mistake of fact, duress, ignorance, and undue influence." The evidence simply does not sustain the conclusions of fact and law set forth in the complaint.

In plaintiffs' Supplemental Trial Brief, it is argued the land in question should be impressed with a constructive trust and that therefore the heirs may pursue it in the hands of the government. Plaintiffs' argument is that:

“Not only were the coheirs not agreeable to the exchange, but the government officials who were applying pressure to Joaquin knew of this opposition. Because of this knowledge on the government’s part, the property taken has been impressed by the law with a trust in favor of the principal.”

[3] The argument is an example of what plaintiffs hoped the evidence would show. It did not do so. Also the authorities cited in support do not conform to the law applicable to the case. The government had a right to presume the trustee would comply with the law and obtain consent of the other heirs to the exchange. *Hammert v. McKnight*, (Okla.) 269 P. 289. There was no evidence the government officials had been given any information by the heirs that would warrant upsetting the presumption. It is said in 67 C.J.S., Officers, that:

“The courts will not presume wrong, illegality, collusion, or fraud on the part of public officials and if an act or decision be attacked upon those grounds, the facts showing the wrong must be clearly shown.”

The facts have not been clearly shown by any satisfactory evidence by plaintiffs.

The rule relied upon by plaintiffs and cited from *Lantz v. Stribling*, 279 P.2d 112 (Cal.) is that: “One who takes property from a trustee in violation of the trust with knowledge of the trust holds the property subject to the trust as a constructive trustee.” This general statement is incomplete. When the person who receives the property wrongfully transferred by the trustee gives value, he is a bona fide purchaser and is protected. He may be subject to rescission unless the action is barred by laches if he is not a bona fide purchaser.

The Restatement of Restitution gives the general rule as cited by plaintiffs, at Sec. 169, but in the preceding Sec. 168, the exception to the general rule is included:

“Sec. 168(1) Where a person holding property in which another has a beneficial interest transfers title to the property in violation of his duty to the other, the transferee holds the property subject to the interest of the other, unless he is a bona fide purchaser.”

The Restatement of Restitution applies the bona fide purchaser exception at Sec. 172:

“(1) Where a person acquires title to property under such circumstances that otherwise he would hold it upon a constructive trust or subject to an equitable lien, he does not so hold it if he gives value for the property without notice of such circumstances.

“(2) In the Restatement of this Subject such a transferee is called a bona fide purchaser.”

[4] Even if a constructive trust arises there may not be recovery by the beneficiaries of the trust if rescission is barred by laches by either the trustee or the beneficiary, or, as the evidence shows in the case at bar, the beneficiaries of the trust ratify the exchange by acceptance and use of the benefits. *Milton v. Hare* (Ore.) 280 P. 511, *Sims v. Robinson* (Wash.) 253 P. 788, and in *Alexander v. Phillips Petroleum*, 130 F.2d 593, the court said: “Where a principal, with knowledge of the unauthorized act of his agent, remains silent and acquiesce therein for an unreasonable time, he will be presumed to have ratified such unauthorized act.”

[5, 6] The statement, the government applied pressure on the trustee, is completely contrary to the facts. After asking if the trustee wanted to make the exchange, the government delayed for three years before it was consummated. During that time, none of the plaintiffs raised any objection. There was no duress. Nor were the elements of fraud shown by any evidence. One of the elements of fraud is that there be a false representation of a material fact. 33 C.J.S., Exchange of Property, Sec. 4. If anyone made a false representation here that the heirs had consented to

the exchange, it was the trustee, not the government. Another element discussed in the same treatise is:

"Injury of some description must result in order there may be fraud justifying relief, and where a party receives property of equal value, he is not entitled to have the exchange set aside."

[7] Discussing undue influence, Corpus Juris points out that "a party may avoid the exchange on the ground he was overreached by the other party." In short, if there had been undue influence upon the trustee, he was the one to avoid the exchange. He did not. Fourteen years after the exchange the trustee died without any attempt to rescind. After his death, the plaintiffs brought their suit. The very timing of this action brought shortly after the death of the trustee makes the claim of the plaintiffs suspect. They waited until the one person who could shed light on the government's alleged fraud and duress was no longer available to testify. Their conduct and their counsels intemperate and unsupported accusations against the government prejudices acceptance of the legitimacy of their claims.

Plaintiffs did not give any reason for the long delay. The fact they waited until the oldest brother was dead, plus the amount of time that elapsed, is persuasive that justice requires the imposition of laches barring this action for rescission of an agreement made in 1954, executed in 1956, and brought to court in 1970.

Laches is discussed in 30 C.J.S., Equity, Sec. 112, et. seq., and is defined:

"Laches in a general sense is the neglect, for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done."

The text writer adds:

"A stale demand or claim is one which is first asserted after an unexplained delay of such great length as to render it difficult or

impossible for the court to ascertain the truth of the matter in controversy and do justice between the parties."

Laches gives rise to the presumption a stale claim has been abandoned or satisfied. The passage of time as well as the use of the property received in the exchange by the heirs gives rise to the presumption of satisfaction and bars rescission.

It is said in the Restatement of Restitution, Sec. 64: "An unreasonable delay in manifesting an avoidance of a transaction after the acquisition of knowledge of the facts terminates the power of rescission for fraud or mistake, and the consequent right to restitution." Comment (a) of Sec. 64, adds:

"A transaction which is avoidable because of fraud or mistake remains effective unless it is avoided by the person entitled to avoid it The power to avoid may be exercised at any time until suit is barred by the statute of limitation, change of position by the transferee or laches."

In *O'Keefe v. Beksens* (Kan.) 85 P. 555, an ejectment action brought by heirs attacked an administrator's deed on the ground it was void. The court said in application of laches:

"The state itself, as a matter of public policy, is interested in the repose and stability of land titles, in the development and improvement of landed property which doubtful tenures prohibit, and in the repression of vexatious and speculative litigation When such time has elapsed, no matter what the irregularities may be, for all purposes of the law the proceedings are valid, and ejectment against the purchaser will not lie."

Appropriate to the present situation is the statement of the Arizona Court in *Durazo v. Durazo*, 173 P. 350, holding the delay for the period of the statute of limitations barred rescission on the grounds of duress and that the suit, therefor was barred by laches "thereby permitting the matters arising out of troubled family matters to rest in peaceful slumber."

The period of a statute of limitations is usually applied to the passage of time, plus other elements for a bar of laches. There are two Trust Territory statutes available. A suit against the trustee for his alleged wrongful exchange of the land would have been barred in two years by 6 TTC 304 or for a suit for the rescission of the exchange, sought by these plaintiffs, action is barred after six years by 6 TTC 305. The unexplained delay of fourteen years is much too long to permit rescission on the case at bar.

If the plaintiffs had truly been dissatisfied with the trustee's representation of them any time after his appointment, before or after the exchange of the land, they could have removed him and blocked or rescinded any action by him. Land Regulation No. 1, Sec. 9, provides, in part:

"The Trial Division of the High Court may upon petition duly filed and hearings thereon at any time remove and replace a Land Trustee, or, in the case of an estate, appoint an executor or administrator who shall automatically succeed the Land Trustee in all matters affecting the estate."

Failure to accept the government's invitation to go to court to remove the trustee and rescind his actions is grounds for denial of the relief sought by plaintiffs even if they had been able to produce evidence to sustain their claim.

This provision of Land Regulation No. 1 also precludes application of the waiver of immunity provisions enacted in Title 6. It is immaterial whether or not the plaintiffs could come to court under the waiver statute because Land Regulation No. 1 permitted recourse to the High Court.

Ordered, adjudged and decreed:—

1. That plaintiffs are denied relief.
2. Title to Garapan Lot No. 1351 is and has been vested in the Trust Territory government since May 1, 1956.
3. Title to the land conveyed by the government by grants dated April 10, 1956, and recorded May 1, 1956, described as:

(a) Lot 1, Block 1, Puntan Mutchot Village Subdivision;

(b) Lot 2, Block 1, Puntan Mutchot Village Subdivision;

(c) The 40,372 square meters, more or less, of land in Aslito and depicted in APWO drawings Nos. 11413 and 11416 on file with the Clerk of Courts; are vested in the heirs of Jose Crisostimo, who may be determined in appropriate proceedings in the court.

4. This judgment shall not affect any rights of way there may be over the lands in question.

5. No costs are allowed.

CAROL N. OVERBY, Petitioner

v.

OSCAR FREDERICK OLSEN, Respondent

Civil Action No. 25-73

Trial Division of the High Court

Marshal Islands District

July 1, 1974

Uniform Reciprocal Support Act action. The Trial Division of the High Court, Turner, Associate Justice, held defendant liable for payments in arrears.

1. Constitutional Law—Applicable Law

The United States Constitution and its Full Faith and Credit Clause are not applicable to the Trust Territory.

2. Constitutional Law—Due Process—Hearing

Should respondent under a Uniform Reciprocal Support Act action challenge the validity of the act, the petitioner or obligee under the act would have to be given an opportunity to respond at the hearing, and failure to give such opportunity would be contrary to the principles of due process provided by statute. (39 TTC Ch. 9; 1 TTC § 4)

3. Domestic Relations—Uniform or Reciprocal Statutes—Foreign Judgments and Orders

Under the Uniform Reciprocal Support Act, a foreign judgment will be enforced as a result of the mandate of the act and not under the