



By Order of the Court, Judge Joseph N. Camacho

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FOR PUBLICATION



E-FILED
CNMI SUPERIOR COURT
E-filed: Dec 01 2017 04:45PM
Clerk Review: N/A
Filing ID: 61411913
Case Number: 15-0080-CV
N/A

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

ESTATE OF) CIVIL ACTION NO. 15-0080
ELPIDIA DELA CRUZ NAUTA)
) ORDER GRANTING
) ADMINISTRATRIX’S PETITION FOR
) FINAL DISTRIBUTION OF NON-
) ANCESTOR’S LAND AS A ONE-HALF
) INTEREST WITH A 55-YEAR LIMIT TO
) THE NON-NORTHERN MARIANAS
) DESCENT SURVIVING SPOUSE
) PURSUANT TO 8 CMC § 2903 AND A
) ONE-HALF INTEREST IN EQUAL AND
) UNDIVIDED SHARES TO THE
) NORTHERN MARIANAS DESCENT
) CHILDREN IN FEE SIMPLE ABSOLUTE
) (KOBLEVILLE PROPERTY)
)

THIS MATTER came before the Court on December 29, 2016, at 9:00 a.m. in Courtroom 220 on Administratrix Bernadita Dela Cruz’s (“Administratrix”) Petition for a Decree of Final Distribution (“Petition”). Surviving spouse and heir, William Aguon Nauta (“William Sr.”), and son and heir, Kenneth Dela Cruz Nauta (“Kenneth”), oppose the Petition on separate grounds.¹ Attorney Jennifer Dockter represents Administratrix. Attorneys Edward Arriola and Brien Sers Nicholas represent William Sr. and Kenneth, respectively.

¹ The Petition identified the other heirs as William C. Nauta (“William Jr.”) and John C. Nauta (“John”) who are both Decedent’s sons. However, William Jr. and John did not submit any opposition to the Petition. Decedent and her three sons, William Jr., Kenneth, and John are persons of Northern Marianas Descent. William Sr., the surviving spouse, is not of Northern Marianas Descent.

1 After a careful review of the filings on record, the applicable laws, and arguments of
2 counsels, the Court **GRANTS** the Administratrix’s Petition as to Lot 31 L 03 (“Koblerville
3 Property”). As to Lots 572 and 573 “C” (Chalan Piao Properties”) and Lot 60 of Tract 20546
4 (“Long Beach Property”), the Court will issue separate orders.

5 **I. BACKGROUND**

6 Decedent was a person of Northern Marianas Descent (“NMD”).² Decedent’s surviving
7 spouse, William Sr., is a person of non-Northern Marianas Descent (“non-NMD”). The Decedent
8 was survived by her sons, William Jr., Kenneth, and John, who are NMD like their mother.

9 The Administratrix’s Petition, filed on July 7, 2016, sought the disposition of several assets,
10 including Decedent’s real properties. The real properties in question are: (1) Chalan Piao
11 Properties; (2) Koblerville Property; and (3) Long Beach Property. As these properties all involve
12 distinct legal issues, the Court will address the disposition of these three sets of property in separate
13 orders.

14 The Petition sought the disposition of the Koblerville Property as follows:

15 **Koblerville Property:**

16 a. **To [WILLIAM SR.] an UNDIVIDED ONE-HALF SHARE**, for his
17 life, but in no event longer than fifty five years, and the vested remainder
18 in fee simple to **WILLIAM C. NAUTA, KENNETH DLC. NAUTA,**
and JOHN C. NAUTA, in equal and undivided shares, and

19 **To WILLIAM C. NAUTA, KENNETH DLC. NAUTA, and JOHN C.**
NAUTA, in fee simple in equal and undivided shares an **UNDIVIDED**
ONE-HALF SHARE in

20 i. **UNDIVIDED ONE-EIGHTH INTEREST** in [the Koblerville
21 **Property]**

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24 ² A person of Northern Marianas Descent is a person who “is a citizen of the United States and has at least some degree
of Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof.” NMI Const. art. XII
§ 4. Only persons of Northern Marianas Descent may own real property in the Commonwealth. NMI Const. art. XII § 1.

1 Initially, the Petition classified the Chalan Piao Properties as ancestor’s land and determined
2 that the Koblerville Property is non-ancestor’s land or “Other Property” for purposes of intestate
3 succession. However, after considering the objections raised by heirs William Sr. and Kenneth, the
4 parties agreed that the Chalan Piao Properties are more properly classified as non-ancestor’s land.
5 Thus, the Administratrix requested leave to amend the classification of the Chalan Piao Properties
6 to non-ancestor’s land. The classification of the Chalan Piao Properties will be addressed in a
7 separate order. Since there is no dispute as to the classification of the Koblerville Property as non-
8 ancestor’s land, the Court will treat the Koblerville Property as non-ancestor’s land for the purposes
9 of this Order.

10 **II. DISCUSSION**

11 Because the parties do not dispute the Administratrix’s designation of the Koblerville
12 Property, the Court finds that it is non-ancestor’s land for purposes of intestate succession. The key
13 issue is whether William Sr., as the surviving spouse and a non-NMD, is prohibited from acquiring
14 an interest in the Koblerville Property. Pursuant to 8 CMC § 2903(a), “[t]he surviving spouse
15 obtains one-half of all properties, other than [ancestor’s land]” Thus, William Sr., as the
16 surviving spouse, is entitled to a one-half interest in the Koblerville Property. 8 CMC § 2903(a)
17 makes no distinction on whether the surviving spouse must be of Northern Marianas Descent.
18 Furthermore, a surviving spouse’s non-NMD status has no effect on his or her ability to inherit a
19 leasehold interest³ in non-ancestor’s land. *See generally Estate of Tudela*, 2009 MP 9 (holding that
20 a non-NMD spouse may inherit non-ancestor’s land in fee simple if there are no surviving issue).

21 Kenneth argues that pursuant to *Tudela*, 2009 MP 9, William Sr., who is non-NMD, is
22 prohibited from acquiring any interest in the Koblerville Property because Decedent is survived by

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24 ³ A leasehold interest is “a lessor’s or lessee’s interest under a lease contract.” BLACK’S LAW DICTIONARY 766
(Abridged 9th Ed.).

1 issue who are NMD: namely, William Jr., Kenneth, and John. Kenneth argues that *Tudela* prohibits
2 William Sr. from taking any interest in the Koblerville Property because the Decedent was survived
3 by issue⁴ who are eligible to own land in the Commonwealth in fee simple absolute⁵. Kenneth’s
4 interpretation misunderstands the holding in *Tudela*.

5 In *Tudela*, the Commonwealth Supreme Court considered whether a surviving spouse who
6 was non-NMD was entitled to take the entire estate when the decedent leaves no issue. 2009 MP 9
7 ¶ 6. Largely relying on the Uniform Probate Code, the Supreme Court held that in the event a
8 decedent is survived by a surviving spouse who is of non-NMD and leaves no issue, the non-NMD
9 surviving spouse is able to take the entire estate in fee simple. *Id.* at ¶¶ 18-21. The Supreme Court
10 reasoned that a non-NMD surviving spouse taking ownership of land in fee simple survives
11 challenges under Article XII of the Commonwealth Constitution (“Article XII”) because eventually
12 he or she must convey his or her fee simple interest to a NMD. *Id.* at ¶ 21.

13 In *Tudela*, the Commonwealth Supreme Court’s decision was limited to the issue of who is
14 to take the remaining one-half interest in decedent’s property if there are no surviving issue. Under
15 *Tudela*, a non-NMD surviving spouse retains his or her one-half share, but may be entitled to the
16 remaining one-half share or the entire estate if there are no surviving issue: “[s]ubsection (a) of 8
17 CMC § 2903 grants Mrs. Tudela, as the surviving spouse, a one-half interest in the decedent’s
18 properties. However, one question remains: who takes the remaining one-half interest?” *Tudela*,
19 2009 MP 9 ¶ 13. Section 2903(b) provides, “[t]he issue of the decedent obtains one-half of all
20 properties, other than [ancestor’s land], by representation.” According to *Tudela*, in a “typical
21 situation, when a decedent leaves a spouse, he will also leave issue, and each will take half.” 2009

23 ⁴ Issue is a term of art meaning “lineal descendants of all generations, with the relationship of parent and child at each
24 generation being determine by the definitions of child and parent.” 8 CMC § 2107(q).
⁵ Fee simple absolute is a term of art meaning “an estate of indefinite or potentially infinite duration.” BLACK’S LAW
DICTIONARY 543 (Abridged 9th Ed.).

1 MP 9 ¶ 15. In the present case, a non-NMD surviving spouse and the NMD surviving children may
2 take half of the Koblerville Property.

3 Here, Decedent is survived by her non-NMD spouse, William Sr., and her NMD sons
4 William Jr., Kenneth, and John. As stated in 8 CMC § 2903(a) and the Commonwealth Supreme
5 Court’s holding in *Tudela*, William Sr. is entitled to his one-half share in interest in the Koblerville
6 Property and the remaining one-half interest shall be an equal undivided share among the
7 Decedent’s issue—in this case, her three sons.

8 Although the Court finds that William Sr., as the surviving spouse, is entitled to an
9 undivided one-half interest in the Koblerville Property, the Commonwealth Constitution requires
10 that such interest must be limited to a term of 55 years. NMI Const. art. XII. Notwithstanding
11 *Tudela*, which holds that a surviving spouse may acquire a fee simple interest in the decedent’s
12 entire estate if there are no surviving issue, Article XII, Section 2 of the Commonwealth
13 Constitution⁶ prevents the non-NMD surviving spouse from taking the property in fee simple when
14 the decedent leaves issue who are eligible to own land in the Commonwealth. *See* NMI Const. art.
15 XII, § 2 (“A transfer to a spouse by inheritance is not an acquisition under this section if the owner
16 dies without issue or with issue not eligible to own land in the Northern Mariana Islands. . .”).
17 Thus, Article XII limits 8 CMC § 2903(a)’s application to a term of not more than 55 years for a
18 non-NMD surviving spouse when a decedent has issue who are NMDs.

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22 ⁶ Article XII, Section 1 of the Commonwealth Constitution provides “[t]he acquisition of permanent and long-term
23 interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent.” “The
24 term acquisition . . . includes acquisition by sale, lease, gift, inheritance or other means. A transfer by inheritance is not
an acquisition under this section if the owner dies *without issue or with issue not eligible to own land in the Northern
Mariana Islands. . .*” NMI Const. art. XII, § 2 (emphasis added). Furthermore, “[t]he term permanent and long-term
interests in real property . . . includes freehold interests and leasehold interests of more than fifty-five years. . . .” NMI
Const. art. XII, § 3.

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III. CONCLUSION

Based on the abovementioned reasons, the Court **GRANTS** Administratrix’s Petition for the disposition of the Koblerville Property.⁷ The Koblerville Property shall be distributed as follows:

To [WILLIAM SR.], as the non-Northern Marianas descent surviving spouse, an UNDIVIDED ONE-HALF SHARE, for his life, but in no event longer than fifty five years, and the vested remainder in fee simple to WILLIAM C. NAUTA, KENNETH DLC. NAUTA, and JOHN C. NAUTA, in equal and undivided shares, and

To WILLIAM C. NAUTA, KENNETH DLC. NAUTA, and JOHN C. NAUTA, in fee simple in equal and undivided shares an UNDIVIDED ONE-HALF SHARE in

ii. UNDIVIDED ONE-EIGHTH INTEREST in [the Koblerville Property]

IT IS SO ORDERED this 1st day of December 2017.

/s/
JOSEPH N. CAMACHO
ASSOCIATE JUDGE

⁷ The Court shall issue separate Orders as to the Chalan Piao and Long Beach Properties.