



E-FILED
 CNMI SUPERIOR COURT
 E-filed: Apr 07 2022 04:48PM
 Clerk Review: Apr 07 2022 04:48PM
 Filing ID: 67458768
 Case Number: 05-0064-CV
 N/A

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

**ESTATE OF
 PEDRO MANGLOÑA ATALIG**

CIVIL ACTION NO. 05-0064

Deceased.

**ORDER DENYING A NON-
 NORTHERN MARIANAS DESCENT
 SURVIVING SPOUSE FROM
 INHERITING LAND BECAUSE THERE
 ARE CHILDREN OF NORTHERN
 MARIANAS DESCENT WHO CAN
 INHERIT THE LAND PURSUANT TO
 ARTICLE XII, SECTION 2 OF THE
 NMI CONSTITUTION**

I. INTRODUCTION

This matter came before the Court on Thursday, June 17, 2021 at 10:00 a.m., on the Amended Petition for Partial Distribution filed on March 22, 2021 by Administratrix Nelida Atalig (“Nelida”), who appeared and testified. Nelida is the surviving spouse of Pedro Manglona Atalig (“Decedent” or “Atalig”). Nelida seeks to receive an interest in parcels of real property that were owned by Atalig at the time of his death. The interest she seeks in those parcels is an estate for years for a period of fifty-five years. At the hearing, Nelida was represented in her individual capacity by Joseph Horey, and in her capacity as Administratrix by Matthew Holley.

Based on a careful review of the filings and applicable law, and the arguments of counsel, the Court issues the following Order.

II. FINDINGS OF FACT

1. Pedro Manglona Atalig (“Atalig” or “Decedent”) was a Chamorro and a person of Northern Marianas descent (“NMD”).

By order of the Court, Judge Joseph N. Camacho

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2. Atalig died on February 16, 2005.
3. Atalig died intestate.
4. At the time of Atalig’s death, he was married to Nelida Atalig (“Nelida”).
5. During his lifetime, Atalig had biological NMD children with Nelida.
6. Nelida is not an NMD.
7. Prior to his marriage to Nelida, Atalig was in relationships with other women that resulted in three other sets of children from three different women.¹
8. All of Atalig’s children are NMDs and eligible to inherit land.
9. Atalig owned several real properties totaling 300,509.3 square meters throughout the Northern Marianas at the time of his death.
10. Nelida argues that she is entitled to inherit 150,254.65 square meters for fifty-five years.²

III. LEGAL STANDARD

A. Article XII of the NMI Constitution

“The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent.” NMI CONST. art. XII, § 1 [Article XII]. “The term acquisition used in Section 1 includes acquisition by sale, lease, gift, inheritance or other means.” NMI CONST. art. XII, § 2. “A transfer to a spouse by inheritance is not an acquisition under this section if the owner dies without issue

¹ Pedro Manglona Atalig was a retired Associate Justice of the CNMI Supreme Court. The Court extends the upmost respect to the late justice and his family. No disrespect was intended as it was necessary resolve this legal issue to mention that Justice Atalig had four set of children, with each set having distinct and separate rights of inheritance apart from the biological children of surviving spouse Nelida Atalig. <https://www.nmijudiciary.gov/former-justices>

² However, Nelida is only seeking to inherit 97,389 square meters for a term of fifty-five years. Nelida’s flawed logic seems to argue that she is entitled to half of the real property but is willing to forego a portion of what she is entitled to inherit as either consideration as in a business transaction for a term of 55 years or some gesture of goodwill to the rest of the heirs. As explained in the body of the Order, Nelida does not inherit any land at all and, therefore, she cannot frame her request as some type of consideration or return a portion of the land to which she is not entitled.

1 or with issue not eligible to own land in the Northern Mariana Islands.” NMI CONST. art.
2 XII, § 2; *see also Tudela v. Tudela (In re Estate of Tudela)*, 2009 MP 9 ¶ 19 (stating that
3 “surviving spouses taking through intestacy when there [is] no issue who may own land
4 [are] able to take [the deceased spouse’s land] in fee simple [absolute].”). “The term
5 permanent and long-term interests in real property used in Section 1 includes freehold
6 interests and leasehold interests of more than fifty-five years including renewal rights[.]”
7 NMI CONST. art. XII, § 3. “A person of Northern Marianas descent is a person who is a
8 citizen or national of the United States and who has at least some degree of Northern
9 Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof.” NMI
10 Const. art. XII, § 4.

11 The purpose of Article XII is to benefit and protect NMDs.³ Marianas Political
12 Status Commission, *Section by Section Analysis of the Covenant to Establish a*
13 *Commonwealth of the Northern Mariana Islands 116-17 (1975)* (stating that the land
14 restriction requirements of the Covenant “expressly recognizes the importance of the
15 ownership of land for the culture and traditions of the people of the Northern Mariana
16 Islands and the desirability of protecting them against exploitation and promoting their
17 economic advancement and self-sufficiency” and cannot be changed without the express
18 consent of the Commonwealth Government and the Government of the United States).
19 “Although the population [of the CNMI] may grow in the future, the available land cannot
20 increase.” *Analysis of the Constitution of the Commonwealth of the Northern Mariana*
21 *Islands 165 (1976)*. “Land is one of the principal sources of social stability.” *Id.* “Land is the
22 basis of family organization in the islands.” *Id.* “Restrictions on land alienation are
23 necessary to preserve the character and strength of the communities that make up the
24 Commonwealth.” *Id.* at 166. Thus, the restrictions of “Article XII should be strictly

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26 ³ The Court is cognizant of the significance of Article XII’s protections in regard to the history of the United States. Article XII ensures that those of Northern Marianas descent will have a “homeland” to call their own. Historically, the United States Government has either not bestowed upon or not respected such protections to other minority groups – such as Native Hawaiians, Alaska Natives, and American Indians. As a result, the control of the land these native and indigenous groups have called “home” for thousands of years has either diminished or been stripped away entirely.

1 enforced.” *Manglona v. Kaipat*, 3 NMI 322, 335 (1992); *see also Aldan-Pierce v. Mafnas*, 2
2 NMI 122, 144 (1991) (“The absence of any language excluding such interests from the
3 restriction in Article XII leads us to conclude that they are within the restriction.”).

4 “Any transaction made in violation of [Article XII] shall be void ab initio.” NMI
5 CONST. art. XII, § 6. “This means that if a person sells land to a person who is not of
6 Northern Marianas descent, that transaction never takes effect and never has any
7 consequences with respect to the title of the land.” *Analysis of the Constitution of the*
8 *Commonwealth of the Northern Mariana Islands* 178 (1976).

9 10 **B. Constitutional Construction**

11 “In general, when presented with a question of constitutional interpretation we are
12 duty-bound to give effect to the intention of the framers of the NMI Constitution.” *Elameto*
13 *v. Commonwealth*, 2018 MP 15 ¶ 15 (citation and internal quotation omitted). The NMI
14 Constitution is a higher source of law than a Commonwealth statute. *See Cody v. N. Mar. I.*
15 *Ret. Fund*, 2011 MP 16 ¶ 25. Statutes will be invalid in certain contexts if the statute as
16 applied would be unconstitutional in that context. *See Commonwealth v. Sablan*, 2016 MP
17 12 ¶ 13 (“To invalidate a statute as applied, a court must rule that the application of the
18 statute would be unconstitutional in a particular context in which a person has acted.”).
19 When a statute is invalid, it lacks “binding force or legal efficacy.” *Commonwealth Of the N.*
20 *Mar. I. v. Nethon*, 1 NMI 458, 462 (1990).

21 “A court should avoid interpretations of a statutory provision which would defy
22 common sense or lead to absurd results.” *Commonwealth Ports Auth. v. Hakubotan Saipan*
23 *Enters.*, 2 NMI 212, 224 (1991) (internal citation and punctuation omitted).

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1 **C. The Northern Mariana Islands Probate Law⁴**

2 The property of persons domiciled in the Commonwealth of the Northern Mariana
3 Islands who die after February 15, 1984, shall pass according to the Northern Mariana
4 Islands Probate Law (“Probate Law”). 8 CMC §§ 2101, 2102, 2201. Pursuant to the Probate
5 Law, “the surviving spouse obtains one-half of all properties, other than [the decedent’s
6 ancestral lands].” 8 CMC § 2903(a). “‘Property’ includes both real and personal property or
7 any interest therein and means anything that may be the subject of ownership.” 8 CMC §
8 2107(x). “Whenever a person not of Northern Marianas descent takes title to real property
9 under [the Probate law], he or she shall take the maximum allowable legal interest in the real
10 property and the remaining interest if any shall vest in the next closest heirs or devisees who
11 can legally take title to the real property pursuant to N.M.I. CONST. art. XII.” 8 CMC §
12 2411.

13 **IV. DISCUSSION**

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15 Nelida argues that, as Decedent Atalig’s surviving spouse, she is statutorily entitled
16 to inherit one-half the decedent’s property (other than ancestor’s land, not at issue here).⁵ 8
17 CMC § 2903(a). However, Nelida admits that she is not constitutionally eligible to acquire a

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19 ⁴ Though the issue presently before the Court is not Chamorro ancestor’s land. The court notes that its holding is analogous with Chamorro and Carolinian customary law.

20 **Chamorro Customary Law:** Pursuant to Chamorro customary law, when a male dies with a spouse
21 and issue, the man’s ancestral land passes to his issue and not his widow. *See In Re Estate of Guerrero*, 3
22 TTR 546, 550 (R. Div. 1968) (“[U]nder Chamorro custom on Saipan that whereas here a man inherits land
23 from his father and dies leaving a widow and children, the widow is not entitled to any of the land as a matter
of right. The court therefore holds that any grant from the lands in question to the widow must depend on the
generosity of one or both of the children.”); *Palacios v. Coleman*, (Civil Action No. 78-49, Dist. Court,
Northern Mariana Islands, February 15, 1980) (“Where a man owning property marries and subsequently dies
leaving as survivors a widow and children, the property descends in equal shares to his children.”).

24 **Carolinian Customary Law:** Pursuant to Carolinian customary law, land is collectively owned and
25 controlled by women. *See In re Estate of Ogumoro*, 4 NMI 124, 128 (1994). Land descends by the matrilineal
26 lineage from mother to daughter. *See id.* “Carolinian males were traditionally precluded from owning land.” *Id.*
Land owners of the land held it as a trustee for the benefit of their family. *See In re Estate of Rangamar*, 4 NMI
72, 75 (1993).

⁵ The Court is cognizant that there are other sections of the Northern Mariana Islands Probate Law that would
allot the surviving spouse with a decedent’s property. See e.g., 8 CMC § 2601 (“The surviving spouse of the
decedent who was domiciled in the Northern Mariana Islands is entitled to the primary family home and lot,
household furniture, one automobile, furnishings, appliances, and personal effects.”). Nelida is not seeking to
inherit real property pursuant to 8 CMC § 2601. Therefore, the Court need not analyze whether 8 CMC § 2601
as applied to Nelida would also violate Article XII, Section 2.

1 long-term interest in any real property in the Commonwealth because of Article XII, which
2 provides that “[t]he acquisition of permanent and long-term interests in real property within
3 the Commonwealth shall be restricted to persons of Northern Marianas descent.” NMI
4 CONST. art. XII, § 1. This is because Nelida’s inheritance of any of Decedent Atalig’s
5 property would be an “acquisition” of that property, within the meaning of Article XII,
6 because the term “acquisition” includes *inheritance*[.]” NMI CONST. art. XII, § 2. She
7 would be able to inherit real property if Decedent Atalig died “without issue or with issue
8 not eligible to own land in the Northern Mariana Islands.” NMI CONST. art. XII, § 2.
9 However, because Decedent Atalig died with children who are of Northern Marianas
10 descent, Nelida’s inheritance would be an “acquisition.” This case is therefore unlike *Estate*
11 *of Tudela*, 2009 MP 9, in which an inheritance of land by a non-NMD surviving spouse was
12 held not to be an “acquisition” of that land, because the decedent had died without issue.

13 To overcome this constitutional hurdle, Nelida argues that Commonwealth statutory
14 law permits her to inherit real property from Decedent Atalig. 8 CMC § 2411 (“Whenever a
15 person not of Northern Marianas descent takes title to real property under this code, he or
16 she shall take the maximum allowable legal interest in the real property[.]”). In essence,
17 Nelida is requesting to inherit what in common law jargon would be referred to as an “estate
18 for years subject to a special limitation” for the rest of her life but for no more than fifty-five
19 years.⁶ For the reasons stated below, Nelida’s attempt to inherit the land in spite of the
20 existence of Decedent Atalig’s NMD children is void ab initio because it violates Article
21 XII.

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23 ⁶ “An estate for years is an estate, the duration of which is fixed in units of a year or multiples or divisions
24 thereof.” Restatement (First) of Property § 19. “An estate for years can be created subject to a special
25 limitation[.]” Restatement (First) of Property § 19 cmt. c. A special limitation is “language of a conveyance
26 (First) of Property § 23. For example, a will that states from Person A “to [Person] B for ten years if [Person] B
so long lives” creates an estate for years subject to a special limitation and Person A has a reversion.
Restatement (First) of Property § 23 illus. 6. At common law, an estate for years is a non-freehold estate.
Restatement (First) of Property § Scope (“There are estates which are non-freeholds. In the United States these
[include] the estate for years (defined in § 19)[.]”). However, for the purposes of Article XII, an estate for years
is a freehold estate. This is because, for the purposes for Article XII, the term “freehold interest” includes “all
types of ownership or title granted by [...] intestate succession,” not just the common law categories. Analysis
of the Constitution of the Commonwealth of the Northern Mariana Islands 169.

1 The framers of the Commonwealth Constitution (“the Framers”) intended to strictly
2 limit who could and could not acquire land in the Commonwealth. Specifically, long-term
3 interests in property are generally limited only to those of Northern Marianas descent. NMI
4 CONST. art. XII, § 3. Only a few constitutional exceptions to this general rule exist. Due to
5 the sensitiveness of the issue of land alienation in the Commonwealth, the Court will
6 analyze these exceptions as narrowly as possible. *See Manglona*, 3 NMI at 335 (“Article XII
7 should be strictly enforced.”). The exception relevant here is in Section 2 of Article XII. The
8 relevant text states that “[a] transfer to a spouse by inheritance is not an acquisition under
9 this section if the owner dies without issue or with issue not eligible to own land in the
10 Northern Mariana Islands.” NMI CONST. art. XII, § 2. The plain language of this section
11 states that it only applies when land owners die with issue not of Northern Marianas descent.
12 The Framers could have easily made this exception apply to all landowners who die with
13 spouses, regardless whether the issues were NMDs or non-NMDs. Thus, the Court finds that
14 the Framers intended only for individuals to be able to inherit real property from their
15 deceased spouses when the land-owning spouse did not have NMD children. *See Rich v.*
16 *Tenn. Bd. of Med. Exam’rs*, 350 S.W.3d 919, 927 (Tenn. 2011) (stating that “the expression
17 of one thing implies the exclusion of others”).

18 Though 8 CMC § 2411 tries to get around the intent of the Framers, the Court is
19 “duty-bound to give effect to the intention of the framers of the NMI Constitution.” *Elameto*
20 *v. Commonwealth*, 2018 MP 15 ¶ 15 (citation and internal quotation omitted). Because a
21 statutory provision cannot trump
22 the Commonwealth Constitution, the Court finds that 8 CMC § 2411 is unconstitutional
23 when applied to the facts here and thus the Court will give 8 CMC § 2411 no effect.⁷

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25 ⁷ Though the issue presently before the Court is not Chamorro ancestor’s land. The court notes that its holding
26 is analogous with Chamorro and Carolinian customary law. In both Chamorro and Carolinian customary law,
the spouses of the landowners do not inherit property from their deceased partner. *See In re Estate of*
Ogumoro, 4 NMI at 128 (interpreting Carolinian customary law); *Palacios v. Coleman*, (Civil Action No. 78-
49, Dist. Court, Northern Mariana Islands, February 15, 1980) (interpreting Chamorro customary law).
However, the customary practices of the Chamorros and Carolinians state that the surviving spouse is to be
provided for post the death of their spouse. *See In re Estate of Ogumoro*, 4 NMI at 128; *In re Estate of*
Rangamar, 4 NMI at 75 (stating the Carolinian land is used for the benefit of family members). The

1 Because Atalig had NMD children, to grant Nelida her request to inherit half of all of
2 Atalig's real property would in effect deny all of Atalig's NMD children of their rightful
3 inheritance. Fifty-five years is a lifetime for Atalig's NMD children to wait until they can
4 inherit **all**, not just half, of their rightful inheritance of their father's land.

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6 **V. CONCLUSION**

7 For the reasons stated above, the claim of Administratrix Nelida Atalig, a non-
8 Northern Marianas descent surviving spouse, that she is entitled to inherit half of her late
9 husband's lands for fifty-five years pursuant to the probate code 8 CMC § 2411 is **HEREBY**
10 **DENIED**⁸ because non-Northern Marianas descent surviving spouses are not eligible to
11 inherit land when there are Northern Marianas descent children who can inherit the land
12 pursuant to the CNMI Constitution, Article XII, Section 2.

13 **IT IS SO ORDERED** this 7th day April, 2022.

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16 /s/
JOSEPH N. CAMACHO, Associate Judge

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24 inheritance exception in Section 2 of Article XII allows for those not Chamorro or Carolinian who marry a
25 Chamorro or Carolinian to have a safety net once their land-owning spouse dies and there are no children who
can assume ownership of the property for the benefit of the surviving spouse.

26 ⁸ The Court is cognizant that at times, such as the case here, enforcement of Article XII can have harsh results
to foreign investors, non-NMDs heirs, and other long term CNMI residents. However, the over-arching policy
of Article XII is to benefit and protect the people of Northern Marianas descent. Marianas Political Status
Commission, Section by Section Analysis of the Covenant to Establish a Commonwealth of the Northern
Mariana Islands 116-17 (1975); Analysis of the Constitution of the Commonwealth of the Northern Mariana
Islands 165 (1976).