

3

4

6

5

7

9

8

10 11

12

13 14

15

16 17

18

19 20

21

23

2425

26

#### E-FILED CNMI SUPERIOR COURT

E-filed: Apr 14 2025 03:05PM Clerk Review: Apr 14 2025 03:05PM Filing ID: 76058042

Case Number: 01-0440-CV

# FOR THE NORTHERN MARIANA ISLANDS

IN THE SUPERIOR COUR

COMMONWEALTH OF THE NORTHERN MARIANAS ISLANDS AND THE BOARD OF PUBLIC LANDS,

Plaintiffs,

VS.

THE HEIRS OF THOMASA AGUON CAMACHO, Represented by ANTONIA C. OKAWA and UNKNOWN DOES,

Defendants.

**CIVIL ACTION NO. 01-0440D** 

FINDINGS OF FACT AND CONCLUSIONS OF LAW

## I. INTRODUCTION

THIS MATTER came before the Court for a Pretrial Conference on October 8, 2024, at 9:00 a.m. in Courtroom 217A, at the Superior Court, Guma' Hustisia, Susupe, Saipan, Commonwealth of the Northern Mariana Islands ("Commonwealth"). The Commonwealth and the Department of Public Lands<sup>1</sup> ("Plaintiffs") were represented by Assistant Attorney General Charles Reyes. The Heirs of Thomasa Aguon Camacho, represented by Antonia C. Okawa and Unknown Does ("Defendants"), were represented by Charity Hodson.

On September 30, 2024, the parties stipulated that the Court suspend trial in this matter and "conduct a de novo review of the existing administrative record and affirm it if the Court decides it is backed by substantial evidence." *See* Ord. Granting Stip. M. . . . Suspend Trial, 1 ¶ 1 (Oct. 1, 2024).

<sup>&</sup>lt;sup>1</sup> This action commenced on August 7, 2001. In November 2001, the Board of Public Lands became the Marianas Public Land Authority ("MPLA"). The MPLA became the Department of Public Lands ("DPL") in February 2006. As the successor agency to the Board of Public Lands, DPL is the second named Plaintiff in this matter. When discussing past iterations of DPL, this Order will refer to the Agency by the title it held at the relevant time.

The parties appeared before the Court on October 8, 2024 "to discuss . . . [s]ubmission of proposed Findings of Fact and Conclusions of Law ["FOFCOL"] by both parties." *See id.*, 2 ¶ 5. After a review of both parties' FOFCOL, and the evidence in the administrative record, the Court now **AFFIRMS** the administrative record and quiets title to three (3) hectares of part of Lot Number 1319 in Rapugao, Saipan, in favor of Defendants.

II. EXHIBIT LIST

This action challenges an April 10, 2001 Determination of Ownership issued by the Commonwealth Division of Land Registration ("DLR"). DLR examined an administrative record stretching back to 1972 to determine that three (3) hectares of part of Lot Number 1319 in Rapugao, Saipan ("Rapugao Land"), belonged to Defendants. Such a "determination of ownership shall be upheld if it is supported by substantial evidence." *See* 2 CMC § 4249. The Court:

should begin by examining the administrative record to establish whether substantial evidence supports the Land Commission's determination. If substantial evidence supports the agency's otherwise proper decision, the court should affirm.

If the administrative record is deficient and the court is consequently unable to determine whether the Land Commission's determination should stand, the court should permit the parties to submit additional evidence.

Thereafter, the court may affirm or reverse the Land Commission's determination, depending on whether the agency record, as supplemented, warrants affirmance or reversal.

See Songao v. Commonwealth, 4 NMI 186, \*4 (1994). The parties stipulated that the "administrative record is already on file with the Court as Exhibits A through DD ["the administrative record"], filed with [Defendants'] Motion for Summary Judgment." See Ord. Granting Stip. M. . . . Suspend Trial, 1-2 ¶ 1 (Oct. 1, 2024); see also Def.s' . . . MSJ, Ex. A – Ex. DD (Sep. 3, 2024).

Therefore, the Court must examine the administrative record to establish whether it is backed by substantial evidence. The administrative record contains thirty (30) Exhibits:

1	A: Togawa Memorandum with	<b>K</b> : Request for Survey and	U: Memorandum Certifying
2	Index and Attachments (Jun.	Map (July 7, 1992)	Determination of Ownership
3	15, 1998) <sup>2</sup>		to be Issued (Apr. 10, 2001)
4	<b>B</b> : Final Decree of	L: Land Commission and	V: Determination of
5	Distribution, Civil Case No.	Land Registration Aviso <sup>3</sup> re	Ownership (Apr. 10, 2001)
6	91-0261-CV (Jul. 22, 2020)	Survey (Oct. 23, 1992)	
7	C: Note from Dolores R.	<b>M</b> : Togawa Memorandum	W: Publication and Service of
8	Sablan (Apr. 13, 1972)	(May 19, 1999)	Determination of Ownership
9			(Apr. 18, 2001)
10	<b>D</b> : Land Registration Team	N: Togawa Memorandum (Jul.	X: Congressman Torres Letter
11	("LRT") Findings of Fact and	7, 1999)	to Division of Land
12	Recommendation (May 13,		Registration & Survey (Apr.
13	1985)		19, 2001)
14	E: Land Claim Memorandum	O: Attorney McMahon Letter	Y: House Legal Counsel
15	and Preliminary Inquiry (Apr.	(Oct. 4, 1999)	Eason Memorandum to
16	3, 1992)		Congressman Torres (May 21,
17			2001)
18	<b>F</b> : Notice of Formal Hearing	P: Assistant Attorney General	Z: Memorandum from Office
19	by LRT (Feb. 7, 1992)	Dick Folta Memorandum (Oct.	of the Attorney General to
20		29, 1999)	Land Division (Aug. 7, 2001)
21	G: Notice of Formal Hearing	Q: Congressman Dino Jones	AA: CNMI DPL Responses to
22	by Senior Land Commissioner	Letter to DLR (Jan. 30, 2001)	Requests for Admission (Apr.
23	(Mar. 18, 1992)		5, 2024)

<sup>25</sup> 

<sup>&</sup>lt;sup>2</sup> Exhibit A contains all witness statements in the administrative record.

<sup>3</sup> Many functions of the Commonwealth Government were conducted in Chamorro through the 1990s. Here, Aviso translates to "Notice."

1	H: Published Land	R: Congressman Dino Jones	<b>BB</b> : CNMI DPL Responses to			
2	Commission Notice of Formal	Letter to DLR (Feb. 28, 2001)	Interrogatories (Apr. 5, 2024)			
3	Hearing (Apr. 2, 1991)					
4	I: Summary of Hearing (May	S: Togawa Letter to Dino	CC: Rapugao Map Overlaid			
5	21, 1992)	Jones (Mar. 14, 2001)	with Japanese Lots (Sep. 4,			
6			2024)			
7	<b>J</b> : Adjudication (May 21,	T: Congressman Jones Letter	<b>DD</b> : Asia Mapping Sketch No.			
8	1992)	to DLR (Mar. 20, 2001)	23 and James B. Johnson			
9			Excerpt (Sep. 4, 2024)			

#### III. BACKGROUND

The facts of this case cover more than one hundred (100) years of Northern Mariana Islands ("NMI") history. This history is crucial to understanding the sufficiency of the evidence in the administrative record. Some historical context will help the Court to make an informed decision as to whether the administrative record is "supported by substantial evidence." *See* 2 CMC § 4249. As such, the Court will briefly provide historical context. The Court will then state its findings of fact as supported by the evidence in the administrative record. Finally, the Court will review applicable law to determine if the administrative record is backed by substantial evidence.

# A. Administrations of the NMI and Rapugao Land

The German Empire acquired the NMI through a February 12, 1899 treaty with Spain.<sup>5</sup> Germany administered the NMI between 1899 and 1914 ("German Administration"). *See id.* In 1914, the Japanese Navy took control of Micronesia.<sup>6</sup> The Japanese Empire administered the NMI between 1914 and 1944 ("Japanese Administration"). *See id.* 

<sup>&</sup>lt;sup>4</sup> This context is not precedent and should be considered dicta.

<sup>&</sup>lt;sup>5</sup> See Don Farrell, *Partition of the Marianas: A Diplomatic History, 1898-1919*, 2 ISLA: J. MICRONESIAN STUDIES 2, 273-301 (1994).

<sup>&</sup>lt;sup>6</sup> See Sophie Foster, Dirk Anthony Ballendorf, Northern Mariana Islands: German and Japanese Control, BRITTANICA (Jul. 26, 1999), https://www.britannica.com/place/Northern-Mariana-Islands/German-and-Japanese-control.

In the summer of 1944, the United States of America seized the NMI in a series of decisive landings. *See id.* From 1947, until the Commonwealth Constitution took full effect on November 4, 1986, the Trust Territory of the Pacific Islands administered the NMI ("Trust Territory Administration"). *See id.* From 1986, through the present, the NMI have been administered by the Commonwealth ("Commonwealth Administration"). *See id.* 

# **B.** Migration and Repatriation

The German Administration faced labor and land cultivation shortages upon assuming control of the NMI in 1899. Spanish authorities had forcibly removed much of the island's indigenous population to Guam, starting in the seventeenth century.<sup>7</sup> To attract labor and bring land under cultivation, the German Administration instituted a homesteading plan. *See id.*, 78.

The homesteading plan "was a program by which the German government gave out plots of land to Chamorros and Carolinians who agreed to remain on Saipan and to use the land in a productive manner." "The German government recorded all titles to land and issued certificates covering such titles to individual owners."

The Japanese Administration reversed the German policy of attracting Chamorro and Carolinian farmers to the NMI. Large "numbers of Japanese, Okinawans, and Koreans immigrated to the [Mariana] islands" [the latter two groups as forced labor]. "Chamorros and Carolinians were colonial subjects and treated as second-class citizens." *See id.* During the Japanese Administration, and especially during World War II, many Chamorro and Carolinian people left the NMI.

After the end of the Second World War, some who had left returned. However, the war and the rapid changeover of colonial administrations had confused land ownership. Many who returned to their land did not have title documentation. The Trust Territory Administration wished to formalize property repatriation for the returnees. Therefore, the Trust Territory Administration instituted a Land

<sup>&</sup>lt;sup>7</sup> See Alexander Spoehr, Saipan: Ethnology of a War-Devastated Island 25 (1954).

<sup>&</sup>lt;sup>8</sup> See Dirk H.R. Spennemann, The Northern Mariana Islands Judiciary: A Historical Overview 11 (2020).
<sup>9</sup> See Supra. Note 7, 77.

<sup>&</sup>lt;sup>10</sup> See Bruce M. Petty, *Micronesian Voices of the Pacific War*, UNITED STATES NAVAL INSTITUTE (June, 2024), https://www.usni.org/magazines/naval-history/2024/june/micronesian-voices-pacific-war.

Commission. See, e.g., 67 TTC §§ 101-120. "All lands [that] were not claim[ed] after the war from 1944 to 1958 were considered as government land. However, since there [was] now a Land Commission that [was] to [approve] the claim[s] of the people, the people now [had] a chance to claim their land." See Ex. C, 1-2.

The Trust Territory Administration's Land Commission was succeeded by the Commonwealth Administration's DPL, Division of Land Registration and Survey. Throughout the second half of the twentieth century, and into the twenty-first, this Agency has adjudicated claims of prewar land possession. *See* 67 TTC §§ 107-108; *see also* 2 CMC § 4222(b). If it finds claims to be valid, the Agency issues determinations of ownership. *See* 2 CMC § 4222(c). Such a determination is at issue in this matter. *See* Ex. V. If this determination's administrative record is backed by substantial evidence, the Court will affirm and quiet title to the Rapugao Land.

#### IV. FINDINGS OF FACT

Plaintiffs and Defendants dispute certain facts below. However, after reviewing the administrative record, the Court **FINDS** the following facts:

# A. Testimony of Events Prior to World War II

- i. On April 7, 1972, Francisco Salas Cruz (a.k.a. Kico Sungot, "Sungot") provided a statement to the Trust Territory Land Commission for Saipan. Sungot stated that he had received a German Administration title certificate to the Rapugao Land some sixty (60) years earlier, in 1912. *See* Ex. A, 14 (Statement of Francisco Salas Cruz).
  - a. Sungot's statement supported his application to register the Rapugao Land as his prewar property.
    - This process was undertaken so that Sungot and his descendants could hold title to the Rapugao Land.

- b. When asked about physical documentation of this title certificate, or any physical documentation of land ownership, Sungot's daughter, Thomasa Camacho ("Thomasa"), stated "German document lost on typhoon in 1914," and "Document from my father lost during World War II 1944." *See id.*, 12 (Claimant's Testimony at Formal Hearing).
- ii. In 1985, Thomasa's daughter, Antonia Okawa ("Okawa"), stated that her mother told her that Sungot had lived with one Antonia Aguon ("Antonia"), with whom he fathered Thomasa. *See id.*, 28 (Statement of Antonia Okawa).
  - a. Okawa stated that Antonia and Thomasa lived on and farmed the Rapugao land from 1920 "up to World War II." *See id*.
  - b. She also stated that Sungot left Saipan for Guam in 1930. *See id*. Upon leaving Saipan, Sungot "gave [Antonia] the [Rapugao] land for Thomasa when she grew up." *See id*.
  - c. Antonia and Thomasa left Saipan for Pohnpei "prior to the outbreak of World War II." *See* D.s' FOFCOL, 3 ¶ 25; *see also* Ex. A, 5 (Affidavit of Jose Castro Borja).
    - 1. Antonia, Thomasa, and Thomasa's husband Raphael Camacho returned to Saipan on October 19, 1945. *See id.*, 29 (Registration Cards).

## B. Initial Attempts to Register Rapugao Land

- On April 7, 1972, Thomasa submitted an Application for Registration of Land Parcel for the Rapugao Land with the Trust Territory Administration Mariana Islands
   District Land Commission. See id., 9 (Application for Registration of Land Parcel).
  - a. The application listed the Rapugao Land as "unoccupied." See id.

- b. The application provided testimony under oath to LRT member Dolores R. Sablan ("Sablan").<sup>11</sup> This testimony detailed the land's prewar history. See id.
  - Thomasa stated that she and Antonia planted crops including mangoes, avocados, and oranges on the Rapugao Land from 1920 up until the Second World War. See id., 11 (Statement of Thomasa A. Camacho).
  - 2. Thomasa stated that, before the war, the Rapugao land was bordered by land owned by Jose Camacho to the north, mountains to the east, land owned by Jose Borja to the west, and land owned by Froilan Camacho to the south. *See id.*, 9 (Application for Registration of Land Parcel).
    - a. Additionally, Thomasa identified Jose Borja and Jose F. Arriola as witnesses that could testify to her family's prewar use of the Rapugao Land. *See id.*, 11 (Statement of Thomasa A. Camacho).
- c. Sungot provided sworn testimony that he received title to the land from the German Administration in 1912. See id., 14 (Statement of Francisco Salas Cruz).
  - 1. He testified that he gave Antonia the land for Thomasa's eventual use when he left Saipan for Guam in 1930. *See id*.
  - 2. Sungot testified that he made a paper document transferring the land to Antonia and Thomasa, but "it was probably lost during the war." *See id.* 
    - a. He also stated that the document he gave Antonia was the "same paper that was given [to him] by the German Government." See id.

<sup>&</sup>lt;sup>11</sup> As stated in an affidavit submitted before this Court on September 24, 2024, Sablan was the aunt of Sinforosa Camacho Takai, an heir of Thomasa Camacho (therefore a Defendant in this action). *See* Affidavit of Oscar Lujan Takai (Sep. 24, 2024). While this affidavit is not in the stipulated administrative record, the Court notes the familial relationship between Sablan and a named Defendant.

- 3. Sungot acknowledged that the Rapugao Land had been public land since the end of WWII, but stated that he was providing testimony to help reclaim the land for Thomasa. *See id*.
- ii. On April 13, 1972, Sablan noted in the file for the Rapugao Land that Thomasa had registered to claim the land but that "the record of . . . Land Management regarding the claim of Thomasa . . . in Rapugao, part of Japanese Lot No. 1319 . . . According to the record of the Land Management, the land is owned by the [Trust Territory Administration]." *See* Ex. C (Note from Dolores R. Sablan).
  - a. This note encapsulated the present dispute, still ongoing more than fifty (50)
     years later: Defendants' claim competes with the government's *de facto* postwar possession of the Rapugao Land.

# C. Resumption of Proceedings and Witness Testimony

- i. Proceedings paused for a decade.
- ii. On February 10, 1982, Okawa provided a statement to Sablan and the LRT. See Ex.A, 28 (Statement of Antonia C. Okawa).
  - a. Okawa reported that her mother, Thomasa, had relayed to her the prewar history of the Rapugao Land. Okawa's testimony is similar to that provided by Thomasa and Sungot in 1972. See id.
- iii. In 1985, three (3) witnesses testified as to Antonia and Thomasa's prewar habitation and use of the Rapugao Land.
  - a. On April 17, 1985, Jose Castro Borja, then seventy-eight (78) years old,
     testified that he grew up on property south<sup>12</sup> of the Rapugao Land. See id., 17
     (Affidavit of Jose Castro Borja). Borja testified that he remembered seeing

<sup>&</sup>lt;sup>12</sup> In 1972, Thomasa stated that the Rapugao Land was bordered by property owned by Jose Borja to the *west*. *See* Ex. A, 11 (Statement of Thomasa A. Camacho). This appears to contradict Borja's witness testimony that his land was to the south. However, a map of Rapugao overlaid with Japanese Administration lot designations shows that Borja and his heirs' property is to the *southwest* of the Rapugao Land (Lot 1319). *See* Ex. CC (Rapugao Map Overlaid with Japanese Lots). Therefore, the two statements are not necessarily contradictory.

Sungot, Antonia, and Thomasa living on the land before World War II. *See id.* He stated that mango, orange, avocado, and coconut trees planted by Sungot and Antonia were still extant on the Rapugao Land after the war. *See id.* 

- On May 6, 1985, Thomas P. Sablan, then eighty-five (85) years old, testified that Sungot was on the Rapugao Land in "Japanese times." *See id.*, 23 (Witness Testimony of Thomas P. Sablan). Thomas Sablan testified that Sungot lived with Antonia on the land. *See id.* He stated that, even though Sungot left the Land for Guam, Antonia was still on the Rapugao Land "when the war came," and that she had received the land from Sungot. *See id.*
- c. On May 6, 1985, Rosa Aguon, then sixty-two (62) years old, testified that she had been twelve (12) years old when she would go to the Rapugao Land in 1935. See id., 25 (Witness Testimony of Rosa Aguon Reyes). Reyes testified that Antonia was farming the Rapugao Land in 1935. See id. Reyes knew this because she would accompany her father to help Antonia plant crops. See id. Reyes testified that Antonia stayed on the land "up to the war." See id.
  - 1. Rosa Aguon was Thomasa's first cousin. See id.
- iv. On May 13, 1985, the LRT issued their Findings of Fact and Recommendation. *See* Ex. D (LRT Findings of Fact and Recommendation).
  - a. This Recommendation considered Thomasa's 1972 application, her 1972 statement, Sungot's 1972 statement, testimony from Jose Castro Borja,
     Thomas P. Sablan, and Rosa Aguon Reyes, statements by Okawa, and a

Japanese map confirming that Jose	Borja's property	neighbored the	e Rapugao
Land before the war. See id.			

- b. In the Findings of Fact, the LRT "considered and approved that this claim is valid." *See id*.
  - 1. The Team recommended that a determination of ownership be issued to the heirs of Thomasa. *See id*.

# D. Adjudication in Favor of Defendants

- i. On December 18, 19, and 20, 1991, the LRT held a preliminary inquiry on Okawa's claim as representative of the heirs of Thomasa.
- ii. Proceedings continued on March 20, 1992, when the LRT held a formal hearing on Defendants' claim to the Rapugao Land. See Ex. H (Published Land Commission Notice of Formal Hearing).
  - a. On May 21, 1992, LRT Chairman Rogolifoi issued a summary of the March
     20, 1992 hearing. See Ex. I (May 21, 1992 Summary of Hearing). The
     following evidence was presented at the hearing:
    - 1. April 7, 1972 Application Claim;
    - 2. Claim testimony offered on April 7, 1972;
    - 3. Statement of Francisco "Sungot" Cruz;
    - 4. Jose C. Borja's April 17, 1985 Affidavit;
    - 5. Thomas P. Sablan's May 6, 1985 Witness Testimony; and
    - 6. Rosa A. Reyes's May 6, 1985 Witness Testimony.
  - b. At the hearing, the LRT determined it "well-founded that said land is owned by the Heirs of Thomasa Aguon Camacho, represented by Antonia C.
     Okawa." See id.

- iii. On May 21, 1992, the LRT issued its adjudication that the Rapugao Land belonged to Defendants, represented by Okawa. *See* Ex. J (Adjudication).
  - a. On October 23, 1992, LRT informed Okawa that surveyors would be traveling to the Rapugao Land on October 28, 1992, and that she should be present. See Ex. L (October 23, 1992 Land Commission and Land Registration Aviso re Survey).
  - b. However, no further action occurred in this matter for another six (6) years.

# E. Togawa Challenges Adjudication

- i. On June 15, 1998, LRT Chairwoman Consolacion C. Togawa ("Togawa") undertook an investigation of the case file prior to issuing a determination of ownership. See Ex. A, 8 (June 15, 1998, Togawa Memorandum). Togawa declined to issue a determination and recommended that the LRT's 1992 adjudication be reversed on grounds including:
  - a. The adjudication review had not been signed by the Senior Land
     Commissioner;
  - b. Togawa felt the evidence did not support Antonia's claim;
  - c. A Cross Index Record (Real Estate) dated March 3, 1934, indicated that Lot
     No. 1319 was owned by the Japanese Government;
  - d. A Japanese land document indicated that Sungot had leased part of Japanese government-owned land; and
  - e. Togawa had talked to Ms. Elena Camacho Arriola on April 21, 1998;
     Camacho told her that Thomasa and Antonia were in Pohnpei before the war in 1944, and Thomasa arrived in Saipan in 1945.
- ii. On May 19, 1999, Togawa issued a second memorandum reincorporating her recommendations from 1998. *See* Ex. M (May 19, 1999, Togawa Memorandum).

- a. A third memorandum from Togawa reiterated that Defendants' claim was invalid and should be dismissed. See Ex. N (July 7, 1999, Togawa Memorandum).
- iii. On October 4, 1999, Okawa's attorney directed a letter to Senior Land Commissioner Juan S. Torres, rebutting the arguments in the 1998 Togawa memorandum. See Ex. O (Attorney McMahon Letter).
- iv. On October 29, 1999, Assistant Attorney General Dick Folta reviewed the administrative file and Togawa's investigation. See Ex. P (October 29, 1999, Assistant Attorney General Dick Folta Memorandum).
  - a. Folta, reviewing for abuse of discretion, found Togawa's noted inconsistencies insufficient to overturn, and recommended issuing a determination of ownership. See id.

# F. Legislative Recommendations, Determination of Ownership, and Legal Challenge

- i. On January 30, 2001, CNMI Representative Dino Jones issued a letter to the Director of the DLR. *See* Ex. Q (January 30, 2001, Congressman Dino Jones Letter to DLR). Congressman Jones noted that DLR had already partitioned and assigned one half (0.5) hectare of the Rapugao Land to others as homesteads. *See id.* DLR had recommended offering the remaining two and a half (2.5) hectares to Defendants, or offering nearby public land to swap for that assigned. *See id.* Congressman Jones noted these discussions in this letter and offered to communicate the options to Defendants. *See id.* 
  - a. Congressman Jones later issued another letter to the Director of DLR, referencing a meeting in which Office of Public Lands Employee Mike Sablan argued that Defendants' ownership of the Rapugao Land had yet to be established. *See* Ex. R (February 28, 2001, Congressman Dino Jones Letter

- to DLR). Mike Sablan used the 1998 Togawa memorandum to support this argument. *See id*.
- b. On March 14, 2001, Togawa wrote a letter to Congressman Jones, reiterating her 1998 memorandum. *See* Ex. S (March 14, 2001, Togawa Letter to Dino Jones). The letter was not signed by the Director of DLR. *See id*.
- ii. Despite her original objections, Togawa next issued a memorandum certifying examination of the 1992 adjudication and recommending that DLR issue a determination of ownership on behalf of Defendants. *See* Ex. U (April 10, 2001, Memorandum Certifying Determination of Ownership to be Issued). This memorandum was signed and certified by the Director of DLR. *See id*.
  - a. This memorandum stated that the "issuance of Determination of Ownership for the above subject Adjudication has been examined and found to have met all requirements under the laws." *See id*.
- iii. On April 10, 2001, DLR issued a determination of ownership of the Rapugao Land on behalf of Defendants. *See* Ex. V (Determination of Ownership).
  - a. The determination of ownership was published in the newspaper and served on interested parties. *See* Ex. W (Publication and Service of Determination of Ownership).
- iv. On August 6, 2001, the Board of Public Lands and the Commonwealth filed the Complaint in this matter, challenging the April 10, 2001 determination of ownership.

## G. Proceedings Stall and Eventually Resume

- ii. The April 10, 2001 determination of ownership has not resulted in a Certificate of Title, as final action is blocked by the unresolved Complaint. *See* Ex. Z (August 7, 2001, Memorandum from Office of the Attorney General to Land Division).
  - a. Defendants filed an Answer on November 6, 2001.

I	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	

b. A June 19, 2004, Request for Scheduling Conference was the last action in this matter until 2023.

- On January 20, 2023, Assistant Attorney General Joshua Willis entered a notice of appearance and moved for a status conference. See Ex. AA (April 5, 2024, CNMI DPL Responses to Requests for Admission).
- 2. This Status Conference resumed proceedings, which have continued since.

# V. CONCLUSIONS OF LAW

The parties stipulated that exhibits A through DD of Defendants' Motion for Summary Judgment contained the administrative record. *See* Stip. M. to Submit Record to Court (Sep. 30, 2024); *see also supra*, § II, Exhibit List. The issue now before the Court is whether the April 10, 2001 determination of ownership is backed by substantial evidence in the administrative record. *See* 2 CMC § 4249.

## A. Legal Standard

The Court:

should begin by examining the administrative record to establish whether substantial evidence supports the Land Commission's determination. If substantial evidence supports the agency's otherwise proper decision, the court should affirm.

If the administrative record is deficient and the court is consequently unable to determine whether the Land Commission's determination should stand, the court should permit the parties to submit additional evidence.

Thereafter, the court may affirm or reverse the Land Commission's determination, depending on whether the agency record, as supplemented, warrants affirmance or reversal.

See Songao v. Commonwealth, 4 NMI 186, \*4 (1994). Agency proceedings are afforded regularity by trial courts, but challenges to determinations of land ownership must be reviewed de novo. See In re Pilar de Castro, 2009 MP 3 ¶ 24; but see Songao, 4 NMI at \*2.

Substantial evidence is a more "searching" standard than review for action that is "arbitrary and capricious." *See Limon v. Camacho*, 1996 MP 18 ¶ 22. It is "such relevant evidence as reasonable minds might accept as adequate to support a conclusion." *See Commonwealth Casino Comm'n v. Imperial P. Intl. (CNMI), LLC*, 2023 MP 8 ¶ 15 (quoting *Owens v. Commonwealth Health Ctr.*, 2012 MP 5 ¶ 8). "Substantial evidence means more than a mere scintilla, but less than a preponderance." *See Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014).

The burden of overcoming the presumption of regularity for agency proceedings is on the challenging party. See In re Pilar de Castro, 2009 MP 3 ¶ 24 (citing Estate of Muna v. Commonwealth, 2000 MP 2 ¶ 13). The presumption "may be rebutted by evidence of unfairness or prejudice in the proceedings." See Estate of Muna, 2000 MP 2 ¶ 13. However, the "burden of rebutting the presumption is a heavy one." See id.

## **B.** Discussion

2.5

The NMI Supreme Court directed trial courts to review administrative ownership determinations *de novo*. *See Songao*, 4 NMI at \*2. It later ruled that "administrative ownership determinations enjoy a presumption of regularity." *See In re Pilar de Castro*, 2009 MP 3 ¶ 24 (citations omitted). The presumption "may be rebutted by evidence of unfairness or prejudice in the proceedings." *See Estate of Muna*, 2000 MP 2 ¶ 13. However, the "burden of rebutting the presumption is a heavy one." *See id*.

Plaintiffs cite the familial connection between Dolores Sablan and Defendants as evidence of unfairness in the administrative proceedings. Plaintiffs' FOFCOL retroactively attaches the CNMI Ethics Act to proceedings in 1972 and 1985. See P.s' FOFCOL, 8 ¶ 18. While the Court noted that Dolores Sablan was an aunt to an heir of Thomasa Camacho, the CNMI Ethics Act was not passed until 1992. "The first rule of [statutory] construction is that legislation must be considered as addressed to the future, not to the past." See Commonwealth v. Minto, 2011 MP 14 ¶ 19 (citing Greene v. United States, 376 U.S. 149, 160 (1963)).

1 | re 3 | Th A A 6 | of

Nothing in the legislative history of the CNMI Ethics Act indicates legislative intent for retroactive application. *See* CNMI Ethics Act, Pub. L. No. 8-11, 1 CMC §§ 8501-8577 (1992). Therefore, the familial connection between certain Defendants and members of the Trust Territory Administration Land Commission does not rebut the presumption of regularity afforded to administrative proceedings. The "burden of rebutting [this] presumption is a heavy one." *See Estate of Muna*, 2000 MP 2 ¶ 13. Retroactive application of a 1992 statute does not meet this heavy burden.

Therefore, the 1992 Ethics Act does not prevent entitlement to a presumption of regularity for the administrative proceedings in this matter. The proceedings included testimony by Sungot, Thomasa, and Okawa, as well as witness testimony of Jose Castro Borja, Thomas P. Sablan, and Rosa Aguon. This testimony is the primary evidence supporting Sungot's prewar ownership of the Rapugao Land. The evidence against Sungot's ownership is mostly contained in the so-called Togawa Memorandum. *See* Ex. A, 8 (June 15, 1998, Togawa Memorandum). If Togawa's contentions met the "heavy burden" required to rebut the presumption of regularity, the Court will reverse the April 10, 2001 Determination of Ownership. However, if the Togawa Memorandum did not meet this "heavy burden," the Court will afford regularity to the sworn testimony given in 1972 and 1985.

Substantial evidence is "such relevant evidence as reasonable minds might accept as adequate to support a conclusion." *See Commonwealth Casino Comm'n*, 2023 MP 8 ¶ 15. "Substantial evidence means more than a mere scintilla, but less than a preponderance." *See Garrison*, 759 F.3d at 1009. If the 1972 and 1985 sworn statements and testimony are afforded regularity, "reasonable minds" might accept them as adequate to support Sungot's prewar ownership of the Rapugao Land. The statements and testimony, therefore, would meet the "less than a preponderance" bar, and the Court will find that substantial evidence supports the 2001 determination of ownership. To determine whether or not to afford the administrative proceedings a

presumption of regularity, the Court will analyze the contentions in the 1998 Togawa Memorandum.

2.5

Togawa's first contention is based on supposed inconsistencies between Thomasa's description of her neighbors' location, testimony given in 1985, and historical maps of the Rapugao area. According to Togawa, Thomasa's application stated the adjoining landowners were Jose Borja to the west and Froilan Camacho to the south, but Camacho's property at Lot No. 1340 is located in a "way far" northwesterly direction from Lot No. 1319, and the south boundary of Lot No. 1319 is not by Froilan Camacho but is instead south by Jose C. Borja's property." See Ex. A, 2.

As the Court previously noted, Thomasa's contention that Jose Borja's property was to the west of the Rapugao Land is not necessarily inconsistent with cadastral maps and the testimony of Borja himself. A map of Rapugao overlaid with Japanese Administration lot designations shows that Borja and his heirs' property was to the southwest of the Rapugao Land (part of Lot No. 1319). *See* Ex. CC (Rapugao Map Overlaid with Japanese Lots). This orientation could reasonably have been described as west or south.

Furthermore, Thomasa could reasonably have misremembered the location of Froilan Camacho's property in relation to the Rapugao Land. This mistake is not dispositive, especially when balanced against eyewitness testimony that Thomasa and Antonia farmed the Rapugao Land before WWII.

Togawa's second contention is that the lot number is not mentioned in the "signed document of the formal hearing," and that the document is only signed by one team member. As Defendants noted in their FOFCOL, the administrative record otherwise mentioned Lot No. 1319 multiple times. "The omission of the specific lot number on the one document is not dispositive. There is also no indication that the Testimony needed to be signed by more than one Land Registration Team member." *See* D.s' FOFCOL, 26 ¶ 4. Therefore, Togawa's second contention does not meet the "heavy burden" required to rebut the regularity presumption for determinations of ownership.

1 | 2 | 13 | 3 | 16 | 4 | s | 5 | d | 6 | 1

Togawa's third contention is the inconsistency in 1972 descriptions of the loss of Sungot's land documents. Thomasa stated that Sungot's title document from the German Administration was lost during a typhoon in 1914. *See* Ex. A, 12. When asked if there was "any paper made by you stating that you gave the land to your daughter Thomasa," Sungot said "yes, but it was probably lost during the war." *See id.*, 16. Thomasa stated "[d]ocument from my father lost during World War II 1944." *See id.*, 12. This suggests two separate documents, however, Sungot also answered in the affirmative when asked whether the "same paper that [was] given [to] you by the German Government, that's what you gave Antonia Aguon?" *See id.*, 16.

Togawa cited this as an inconsistency, denying that there were two documents. However, the statements are not necessarily inconsistent. Sungot stated that the German document lost in 1914 was the same he gave to Antonia. He also stated that he "made" a document transferring the land to his daughter, and gave this to Thomasa. This was the document supposedly lost during WWII. Sungot could reasonably have given one document to Antonia and one to Thomasa. He also could have made or been given copies of the same document during the German Administration.

Thomasa gave the following responses in 1972:

Q: Do you have any papers or official documents to ownership? If so, what are they?

A: German document lost on typhoon in 1914.

Q: If you do not have any papers, what happened to them?

A: Document from my father lost during World War II 1944.

See id., 12. Sungot answered in the affirmative when asked whether he "made" a document transferring the land to Thomasa. Sungot could not have "made" a German Administration title document. Furthermore, if there were only one document, Thomasa would not have described a "German document" and a "Document from my father" lost in two separate incidents thirty (30) years apart.

The presumption of regularity "may be rebutted by evidence of unfairness or prejudice in the proceedings." *See Estate of Muna*, 2000 MP 2 ¶ 13. While Togawa cast doubt as to the providence of the German title document, and the document Sungot gave to Thomasa, this doubt is generally unfounded and is not evidence of unfairness or prejudice. Therefore, this supposed inconsistency does not meet the "heavy burden" to rebut the presumption of regularity.

In fact, when afforded regularity, the statements by Sungot and Thomasa tend to support that Sungot received the Rapugao Land as a homestead from the German Administration, rather than as a lease from the Japanese Administration. A devastating typhoon struck the Mariana Islands on October 8, 1914.<sup>13</sup> The Japanese Navy first landed on Saipan on October 12, 1914.<sup>14</sup> If Sungot's statements are afforded regularity, the government document he lost in 1914 must have come from the German Administration, as the last typhoon of 1914 landed before the Japanese. The German homesteading program afforded title documents and homesteads to Chamorro farmers in the manner described by Sungot. Here, history supplements and corroborates the regularity of the administrative record.

Togawa next argued that Jose Borja, Thomasa, and Antonia were living in what is now the Federated States of Micronesia in 1945. This does not present inconsistency, unfairness, or prejudice. Many Chamorro and Carolinian families temporarily fled the NMI to escape the depredations of the Japanese Administration and the devastation of the war in the Pacific. The absence of Antonia and Thomasa is supported by the administrative record. Borja's absence in 1945 would not prevent him from observing Antonia and Thomasa farming the Rapugao Land in the prior fifteen (15) years.

<sup>&</sup>lt;sup>13</sup> See Joint Typhoon Warning Center, Tropical Cyclones Affecting Guam (1671-1990), U.S. NAVY OCEANOGRAPHY COMMAND CENTER, NOCC/JTWC Tech Note 91-2, 31; see also Micronesian Reporter, Typhoon Olive, PACIFIC DIGITAL LIBRARY (1963) ("... a devastating typhoon is said to have struck the islands in 1914."), https://pacificdigitallibrary.org/cgi-bin/pdl?e=d-000off-pdl--00-2--0--010---4-----0-11--10en-50---20-text---00-3-1-00bySR-0-0-000utfZz-8-00&a=d&cl=CL1.7&d=HASH019a48c486650bf8198dde66.5

<sup>&</sup>lt;sup>14</sup> See George Yagi Jr., The Capture of German Micronesia — How Swift Action in 1914 Secured Japan a South Pacific Empire, MILITARY HISTORY NOW (Feb. 17, 2022), https://militaryhistorynow.com/2022/02/17/the-capture-of-german-micronesia-how-swift-action-in-1914-secured-japan-a-south-pacific-empire/

1 | go 3 | Ra 4 | 13 | 19 | 6 | cor 7 | Th

Togawa next cited Jose Borja's testimony that his property was bounded entirely by government land. *See* Ex. A, 3. Togawa claimed this contradicted Sungot's private ownership of the Rapugao Land. However, the "property directly north of Borja's Lot No. 1476 is actually Lot No. 1322 . . . Lot No. 1322 belonged to Jose Palacios Camacho via Title Determination No. 524 until 1954 . . ." *See* D.'s FOFCOL, 28 ¶ 15; *see also* Ex. A, 44, 47. Camacho's lot was private, contradicting the assertion that Borja's property was bounded entirely by government land. Therefore, Borja's mistake is insufficient to rebut the regularity presumption.

Plaintiffs and Togawa cited Japanese documents showing leased government farmland occupied by a "Francisco de la Cruz." *See id.*, 48. While similar, this is a different name than Francisco Salas Cruz. The Japanese Administration document does not mention the widely-used "Sungot" or "Sungod" moniker. The connection between this document and Sungot is too tenuous to meet the "heavy burden" required to overcome regularity.

Similarly inconclusive are Togawa's analysis of Japanese land markers, shown to be incorrect in Defendants' FOFCOL; and an agreement to exchange parts of Lot No. 1319. *See* D.'s FOFCOL, 30 ¶ 26. While this 1955 agreement, cited by Togawa, listed Lot No. 1319 as government land, all "lands [that] were not claim[ed] after the war from 1944 to 1958 were considered as government land." *See* Ex. C, 1-2. Thomasa did not attempt to claim the Rapugao Land until 1972. Therefore, Lot No. 1319 would be listed as government land in 1955, even if Defendants rightfully owned the Rapugao Land.

Analysis of the Togawa Memorandum shows that it does not meet the "heavy burden" required to rebut the presumption of regularity afforded to administrative ownership determinations. *See Estate of Muna*, 2000 MP 2 ¶ 13. This memorandum contained the primary evidence tending to cast doubt on the administrative proceedings. When afforded regularity, the administrative record contains sworn testimony that Sungot received title to the Rapugao Land from the German Administration, rather than receiving a lease from the Japanese Administration. The record contains

6

7 8

9

10

11 12

13

14 15

16 17

18

19

20

21 22

23

24

25

witness testimony that Antonia and Thomasa occupied and farmed the land until forced to flee by the Second World War. Finally, the administrative record does not contain evidence of unfairness or prejudice in the proceedings. Therefore, substantial evidence supports the April 10, 2001 Determination of Ownership. The Court now AFFIRMS the administrative record and quiets title to three (3) hectares of part of Lot Number 1319 in Rapugao, Saipan, in favor of Defendants.

Defendants' FOFCOL asserted the doctrine of laches. See D.s' FOFCOL, 32 ¶ 7. While the Court notes the significant delay in proceedings in this matter, laches is traditionally an equitable defense. Since the administrative record and ownership determinations are backed by substantial evidence, this defense is unnecessary.

Defendants also assert that Plaintiffs' assignment of portions of the Rapugao Land for homesteads and a well constituted an uncompensated taking of private property. This can reasonably be argued after the ownership determination issued on April 10, 2001. However, before this date, the Government held the Rapugao Land as public land and used it as such. The administrative record, to which the Court is limited in its consideration, is insufficient to determine what assignments issued when and to whom. Therefore, the parties shall conduct discovery as to these assignments to determine whether they are takings that entitle Defendants to compensation. The parties shall follow timeliness guidelines for discovery outlined in the NMI Rules of Civil Procedure. See NMI R. Civ. P. 26(d).

///

///

///

# VI. CONCLUSION

After a review of the administrative record and applicable law, and after more than fifty (50) years of delay, the Court now **AFFIRMS** the administrative record and quiets title to three (3) hectares of part of Lot Number 1319 in Rapugao, Saipan, in favor of Defendants.

The parties shall conduct discovery as to the timing and nature of Plaintiffs' assignment of portions of this Rapugao Land. Any determination of improper taking of private property by Plaintiffs shall rest on the results of this discovery. The parties shall follow timeliness guidelines outlined in the NMI Rules of Civil Procedure. *See* NMI R. Civ. P. 26(d). The parties shall file a Status Report when they complete discovery. The Court will thereafter schedule an evidentiary hearing.

**SO ORDERED** this **14**<sup>th</sup> day of April 2025.

TERESA K. KIM-TENORIO
Associate Judge