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

MARIANAS PUBLIC LAND TRUST, *EX. REL.* DANNY JOSE O. FITIAL AND JOSEPHINE T. KAPILEO, **Plaintiffs,** **v.** **DEPARTMENT OF PUBLIC LANDS fka DIVISION OF PUBLIC LAND OF THE DEPARTMENT OF LANDS AND NATURAL RESOURCES, AND NORTHERN MARIANAS HOUSING CORPORATION,** **Defendants.**	**CIVIL ACTION NO. 25-0066** **ORDER CLEARING THE CLOUD ON THE TITLE OF LOT 011 G 71 AND QUIETING TITLE IN FAVOR OF DANNY JOSE O. FITIAL AND JOSEPHINE T. KAPILEO**

THIS MATTER came before the Court for hearing on September 2, 2025 at 2:30 p.m. in Courtroom 220A on the Motion for Summary Judgment filed by the Plaintiffs Marianas Public Land Trust ("MPLT"), *ex rel.* Danny Jose O. Fitial ("Fitial") and Josephine T. Kapileo ("Kapileo"). Plaintiffs were represented by Robert T. Torres. Defendants were represented by the Office of the Attorney General. Appearing for the Northern Marianas Housing Corporation ("NMHC") was Assistant Attorney General Carl F. Dela Cruz. Appearing for the Department of Public Lands ("DPL") was Alison Nelson, Chief of the Civil Division.

To avoid confusion, in this Order when referring to the Department of Public Lands ("DPL"), the term encompasses what is now referred to as DPL and its long oscillating history between autonomous agency run by a board as such the Marianas Public Land

Corporation or the Marianas Public Land Authority or a division of an executive branch department or executive branch department such as the Department of Land and Natural Resources Division of Public Lands or the current Department of Public Lands.

I. FACTUAL BACKGROUND

1. Plaintiff MPLT is a trust established by the CNMI Constitution (NMI Const. Art. XI, § 6) and organized and regulated by the laws of the CNMI.
2. MPLT is the lender for a loan extended to Danny Jose O. Fitial and Josephine T. Kapileo secured by a mortgage on a certain parcel of real estate, Lot 011 G 71. (Exhibit 7 to the Complaint).
3. Danny Jose O. Fitial and Josephine T. Kapileo are the ostensible title holders of Lot 011 G 71 located in Kagman on the island of Saipan and the borrowers of a loan extended by MPLT that is secured by a mortgage on Lot 011 G 71. (Exhibit 7 to the Complaint).
4. On or about July of 1996, DPL issued a Village Homestead Permit for Homestead Village Lot 011 G 71 to applicant and permittee Ramon Ayuyu San Nicolas ("San Nicolas"). San Nicolas was authorized to enter upon, use, and improve for non-commercial residential purposes only, Lot 011 G 71 under the provisions of the Northern Mariana Islands Village Homestead Act of 1979. (Exhibit 1 to the Complaint).
5. In February of 2000, DPL issued a Certificate of Compliance to San Nicolas for Lot 011 G 71. (Exhibit 2 to the Complaint). The permit and the Certificate of Compliance for Homestead Village Lot 011 G 71 were never recorded at the CNMI Recorder's Office. (Compl., Factual Background ¶ 1); (Answer of NMHC, Factual Background ¶ 1); (Answer of DPL ¶ 10).

6. On November 25, 1998, San Nicolas and his spouse, Susan M. San Nicolas ("Susan"), obtained a mortgage loan from NMHC in the principal amount of $65,000.00. The loan was secured by a mortgage on Lot 011 G 71, dated November 25, 1998. The mortgage was recorded in 1998 under File No. 98-3947 at the Commonwealth Recorder's Office. (Exhibit 3 to the Complaint).

7. On February 7, 2000, after the San Nicolas couple constructed a house with the loan and complied with all permit requirements, DPL executed a Quitclaim Deed for Lot 011 G 71 to San Nicolas as Grantee. (Exhibit 4 to the Complaint). This Quitclaim Deed for Lot 011 G 71 was never recorded at the Commonwealth Recorder's Office. NMHC was aware of the Quitclaim Deed in favor of San Nicolas as it received an unrecorded copy in February of 2000. (Compl., Factual Background ¶ 3); (Answer of NMHC, Factual Background ¶ 3).

8. As a result of the failure to record the Quitclaim Deed, there is an apparent break in the chain of title to Lot 011 G 71, that failure to record resulted in DPL appearing as if its interest was never relinquished to another party. (Compl., Factual Background ¶ 4).

9. In the years since February of 2000, San Nicolas started falling behind on his mortgage payments to NMHC such that he was delinquent and in default. (Compl., Factual Background ¶ 5).

10. Rather than wait for a foreclosure action, on August 5, 2004, San Nicolas and his wife Susan surrendered Lot 011 G 71 to NMHC. The couple surrendered their house keys to NMHC. NMHC accepted the surrender and documented the receipt of the property with an internal memorandum. (Exhibit 5 to the Complaint to Quiet Title). The acknowledgement of receipt of the keys and property by NMHC contained a handwritten note that NMHC counsel Matt Smith would prepare a Deed in Lieu of

Foreclosure to transfer title of Lot 011 G 71 from San Nicolas to NMHC. (Exhibit 5 to the Complaint to Quiet Title). NMHC failed to formally draft, execute and record the Deed in Lieu of Foreclosure. (Compl., Factual Background ¶ 5).

11. On March 20, 2001, pursuant to its Home Loan Program investment with NMHC, MPLT and NMHC entered into a consolidated loan agreement wherein MPLT made funds available to NMHC for extending home loans to low-income residents and first-time homeowners. (Compl., Factual Background ¶ 2).

12. In the years after the San Nicolas couple surrendered Lot 011 G 71 to NMHC, a dispute arose between MPLT and NMHC over monies allegedly owed by NMHC to MPLT under the 2001 agreement. (Compl., Factual Background ¶ 6, Exhibit 6 to the Complaint); (Answer of NMHC, Factual Background ¶ 6).

13. After negotiations, MPLT and NMHC entered into a settlement agreement in which NMHC would transfer title and ownership of the loan-funded accounts and properties to MPLT. (Exhibit 6 to the Complaint).

14. The San Nicolas' account, identified as MPLT-62, was one of the assigned accounts. (Plaintiffs Motion for Summary Judgment, Exhibit 1, Appendix A to Assignment of Loans and Mortgages between the Northern Marianas Housing Corporation and the Marianas Public Lands Trust).

15. The assignment was recorded on January 3, 2008, under File No. 08-006 at the Commonwealth Recorder's Office. (Exhibit 6 to the Complaint).

16. In a Warranty Deed dated June 2, 2008, the San Nicolas couple conveyed all the rights, titles and interest they had in Lot 011 G 71 to MPLT. This Warranty Deed was recorded on June 15, 2008, under File No. 08-1068 at the Commonwealth Recorder's Office. (Plaintiffs Motion for Summary Judgment, Exhibit 2).

17. Sometime in 2013, MPLT issued a Request for Proposals ("RFP") under its Supplemental Home Loan Program ("SHIP") whereby first-time homeowners would propose to take over the premises held by MPLT. (Compl., Factual Background ¶ 7).

18. Pursuant to the RFP for Lot 011 G 71, MPLT accepted the bid proposal submitted by Fitial and Kapileo for Lot 011 G 71.

19. On June 14, 2013, MPLT issued a Quitclaim Deed for Lot 011 G 71 to Fitial and Kapileo, subject to a mortgage loan with MPLT. This Quitclaim Deed was filed with the Commonwealth Recorder's Office on March 7, 2014, in book 16, page 99, with file number 14-0394. (Exhibit 7 to the Complaint to Quiet Title).

20. Recently, Fitial and Kapileo applied for funding through the Community Development Block Grant – Disaster Recovery ("CDBG – DR") Program for a renovation of their home. As part of the application process, NMHC obtained a Preliminary Title Report ("PTR") on Lot 011 G 71 and shared the result with Fitial and Kapileo through a letter dated March 11, 2025. The letter informed Fitial and Kapileo that the PTR indicated that the title to Lot 011 G 71 is currently vested in the name of DPL. (Exhibit 8 to the Complaint).

21. Since the issuance of the Quitclaim Deed for Lot 011 G 71 by DPL to San Nicolas in 2000, (Exhibit 4 to the Complaint) the title for Lot 011 G 71 has not been recorded to properly reflect changes in ownership. Although on June 14, 2013, MPLT issued a Quitclaim Deed for Lot 011 G 71 to Fitial and Kapileo, even though Lot 011 G 71 has been conveyed to Fitial and Kapileo by recorded Quitclaim Deed, the PTR indicates that the title to Lot 011 G 71 is with DPL.

22. DPL and NMHC do not claim a fee simple interest or higher title in Lot 011 G 71 than Fitial and Kapileo. (Answer of DPL ¶ 20); (Answer of NMHC, Factual Background ¶ 9).

23. DPL states that the Quitclaim Deed dated February 7, 2000 conveyed DPL's fee simple interest in Lot 011 G 71 to San Nicolas, and DPL released any and all rights in foreclosure in the Quitclaim Deed dated February 7, 2000. (Answer of DPL ¶ 20).

II. LAW AND ANALYSIS

A. Applicable Law

"Summary judgment may be granted where 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.'" *Century Insurance Co. v. Hong Kong Entertainment*, 2009 MP 4, ¶ 14, (*citing* NMI R. CIV. P. 56(c)). A party moving for summary judgment "bears 'the initial and the ultimate' burden of establishing its entitlement to summary judgment." *Furuoka v. Dai Ichi Hotel*, 2002 MP 5 ¶ 22 (*quoting Santos v. Santos*, 4 NMI 206, 210 (1995)). "Once the moving party satisfies the initial burden, the non-moving party must respond by establishing that a genuine issue of material fact exists." *Id*. at ¶ 24. However, "[i]f the non-moving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law." *Id*.

"In making a summary judgment determination, the trial court is required to consider the 'evidence and inferences' most favorable to the party opposing the motion." *Century Insurance Co.*, 2009 MP 4, ¶ 14, (*citing Estate of Mendiola*, 2 NMI 233, 240 (1991)). Summary judgment may be granted only when the court, after reviewing facts and inferences in a light most favorable to the non-moving party, finds that the moving party is entitled to judgment as a matter of law. *See Rios v. Marianas Pub. Land Corp.*, 3 NMI 512, 518 (1993); *Cabrera v. Heirs of De Castro*, 1 NMI 172, 176 (1990). A party opposing

a properly supported motion for summary judgment "may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citing Fed. R. Civ. P. 56(c)). "If the evidence set forth by the non-moving party is 'merely colorable . . . or [was] not significantly probative . . . summary judgment may be granted.'" *Eurotex, Inc. v. Muna*, 4 NMI 280, 284 (1995) (*citing Anderson*, 477 U.S. at 249-50).

The CNMI Supreme Court has recognized a quiet title action as "… [a] proceeding to establish the plaintiff's title to land by bringing into court an adverse claimant and there compelling [the adverse claimant] either to establish his [or her] claim or be forever after estopped from asserting it." *In re Estate of Manglona*, 2023 MP 13, ¶ 27 (quoting *Songao v. Commonwealth of the Northern Mariana Islands*, 4 NMI 186, 189-190, n. 15 (1994)). "[A]n action to quiet title 'lies against those who, at the time it is instituted, are the present claimants to the land under the instrument which creates the cloud.'" *In re Estate of Manglona*, 2023 MP 13, ¶ 28 (quoting *Fusco v. Matsumoto*, 2011 MP 17, ¶ 21). Parties pursue a quiet title action to "determine 'the rights and interest in land as between plaintiffs and defendants.'" *Id.*, 2023 MP 13, ¶ 28 (quoting *Holcomb v. Morris*, 457 So. 2d. 973, 976 (1984)).

B. Analysis

a. The undisputed facts show that Plaintiffs Danny Jose O. Fitial and Josephine T. Kapileo are in fact the fee simple title holders of Lot 011 G 71

In 1996, DPL issued a Village Homestead Permit for Lot 011 G 71 to San Nicolas. In November of 1998, San Nicolas and his wife, Susan, obtained a mortgage loan from NMHC secured by Lot 011 G 71. The mortgage was recorded in 1998 under File No. 98-3947 at the Commonwealth Recorder's Office. In February of 2000, DPL executed a Quitclaim Deed for Lot 011 G 71 to San Nicolas as grantee. This Quitclaim deed was not

recorded. Even without recordation, the Quitclaim deed conveyed title of Lot 011 G 71 from DPL to San Nicolas. *See 3502 Lending, LLC v. CTC Real Est. Serv*., 229 P.3d 1016, 1019 (Ariz. Ct. App. 2010) ("[E]ven an unrecorded instrument is fully enforceable between the parties to the transaction"); 66 Am. Jur. 2d Records & Recording Laws § 93 (2025), ("The failure to record a written instrument affecting the title to land does not divest the purchaser under the instrument of title or destroy the purchaser's claim to some equitable interest in the property"). In 2004, after becoming delinquent on house payments to NMHC, the San Nicolas couple voluntarily surrendered Lot 011 G 71 to NMHC in lieu of foreclosure. There is no dispute from parties that the Deed in Lieu of Foreclosure was never formally created by NMHC or by the San Nicolas couple. However, an NMHC internal memo documents the surrender of keys to the property by the San Nicholas couple and a note that a Deed in Lieu of Foreclosure would be created (Exhibit 5 to Complaint). Some years later, the Mortgage on Lot 011 G 71 was transferred from NMHC to MPLT pursuant to a settlement agreement. The San Nicholas couple executed a deed conveying Lot 011 G 71 to MPLT in 2008. (Exhibit 6 to the Complaint). Once in possession of Lot 011 G 71, MPLT accepted Fitial and Kapileo's bid for Lot 011 G 71, subject to a mortgage, and executed a Quitclaim deed transferring ownership of Lot 011 G 71 from MPLT to the Fitial and Kapileo dated June 14, 2013, and recorded March 7, 2014. (Exhibit 7 to the Complaint).

The undisputed facts clearly demonstrate that the chain of title runs from DPL to Fitial and Kapileo.

b. Prior owner San Nicolas are not necessary parties to this case because they have no present interest in Lot 011 G 71 and complete relief among existing parties can be accorded without them

Nevertheless, DPL and NMHC argue against the granting of summary judgment. For its part, DPL argues that San Nicolas and his wife Susan are necessary parties under Rule 19(a) of the NMI Rules of Procedure. The Court disagrees.

A party is indispensable if in its absence, the Court "cannot accord complete relief among existing parties[,]" or if "that [party] claims an interest relating to the subject of the action and is so situated that disposing of the action in the [party's] absence may: as a practical matter impair or impede the [party's] ability to protect the interest[,] or leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." NMI R. CIV. P. 19(a)(1). The San Nicolas couple are not indispensable parties under Rule 19(a)(1) as complete relief can be accorded among the existing parties. "In order to succeed on a quiet title action, the petitioning party must assert a *present* interest in the subject property." *Fusco v. Matsumoto*, 2011 MP 17 ¶ 21 (quoting *Har v. Boreiko*, 986 A.2d 1072, 1078 (Conn. App. Ct. 2010)). The San Nicolas couple are not present claimants to Lot 011 G 71. The San Nicolas couple conveyed title to MPLT through a Warranty Deed in 2008. (Exhibit 2 to Plaintiffs' Motion for Summary Judgment). This Warranty Deed is an express negation of an interest in Lot 011 G 71. It is not necessary to drag the San Nicolas couple into this litigation where the San Nicolas couple have clearly relinquished any interest in Lot 011 G 71 many years ago. *See Estate of Dowai v. Estate of Dowai*, Case No. CV-21-0281, (NMI Super. Ct. Jan. 13, 2023 at 4-5), (finding that a third-party was not an indispensable party under NMI R. Civ. P. 19(a)(1) in a quiet title action because it had quitclaim deeded the subject real property lot and was not a present claimant to the lot). The San Nicolas couple do not present an adverse interest against MPLT, and/or Fitial and Kapileo. Plaintiffs Fitial and Kapileo are pursuing a quiet title action against DPL and NMHC because DPL and NMHC are the only entities that have a cloud on the title of Lot 011 G 71. In fact, DPL and NMHC have stated that they too do not have any interest on Lot 011 G 71. Counsels for DPL and NMHC also stated that they do not represent the San Nicolas couple.

DPL's invocation of *Matsumoto v. Commonwealth Development Authority*, Civil Case No. 17-0079 (N. Mar. I. Super. Ct. April 3, 2019) (Order Denying the Motion to Dismiss as the Parties' Consent Judgment Violates NMI Const. Art. XII, § 2 because "Foreclosure: is not the Same as a "Deed in Lieu of Foreclosure," Meaning Only the Property that was put up for Collateral can be Foreclosed, not a Substitute Property), as requiring the addition of the San Nicolas couple to the present case is misplaced. Firstly, *Matsumoto* is distinguishable from the present matter as that case was brought by the former owner of a real property lot who gave up the property to the government agency, the Commonwealth Development Authority. The San Nicolas couple are not bringing this action. Secondly, parties pursue a quiet title action to "determine 'the rights and interest in land as between plaintiffs and defendants.'" *In re Estate of Manglona*, 2023 MP 13 ¶ 28 (quoting *Holcomb v. Morris*, 457 So. 2d. 973, 976 (1984)). Adding the San Nicolas couple is unnecessary to resolve the issue of who has superior title as between Plaintiffs Fitial and Kapileo and Defendants DPL and NMHC.

c. MPLT and Fitial and Kapileo have a present interest in Lot 011 G 71

NMHC next argues that the motion for summary judgment should be denied because MPLT cannot sustain a claim for quiet title in the absence of a present claim to the disputed property. (Def. NMHC Oppo. Summ. J. at 3). However, MPLT and Fitial and Kapileo assert a present interest in Lot 011 G 71. *See Fusco v. Matsumoto*, 2011 MP 17 ¶ 21 (ruling that "[i]n order to succeed on a quiet title action, the petitioning party must assert a *present interest* in the subject property.") (emphasis in original). It is undisputed that MPLT has a mortgage interest in Lot 011 G 71. (Compl., Factual Background ¶ 7, Ex. 7); (Answer of DPL ¶ 16); (Answer of NMHC, Factual Background ¶ 7). Fitial and Kapileo are the ostensible title holders of Lot 011 G 71. Fitial and Kapileo are also the borrowers of a loan extended by MPLT that is secured by a mortgage on Lot 011 G 71. (Compl., Factual

Background ¶ 7, Ex. 7); (Answer of DPL ¶ 16); (Answer of NMHC, Factual Background ¶ 7). A mortgage interest in a piece of real estate is a present interest sufficient to allow a mortgagee to pursue a quiet title action against adverse interests in the same real estate. See *Chesney v. Valley Live Stock Co*., 244 P. 216 (Wyo. 1926) (holding that a mortgagee could pursue a quiet title action). MPLT, as a mortgagee, has an interest in protecting its lien and ensuring that Lot 011 G 71 fully secures the mortgage. *Id.* at 221 (stating that [t]he action must be one for the protection of the lien or to aid in its ultimate enforcement. And where, as in this case, the cloud that exists would be a hindrance and obstruction to an advantageous sale under a mortgage, no reason exists why the mortgagee should not be able to bring such action.)[1] Further, MPLT has an interest in assisting Fitial and Kapileo in getting a loan from NMHC to improve Lot 011 G 71, which in turn benefits MPLT's mortgage interest and benefits all parties. Accordingly, NMHC argument on this point is unpersuasive.

NMHC finally argues that Plaintiffs Fitial and Kapileo have not shown a chain of title from DPL to Fitial and Kapileo, and the reason is because the August 5, 2004 surrender of Lot 011 G 71 to NMHC by the San Nicolas couple and the 2008 Warranty Deed also from the San Nicolas couple to MPLT was invalid as violating CNMI mortgage law. To the extent that NMHC is invoking a *Matsumoto* issue as to the propriety of the San Nicolas couple transferring Lot 011 G 71 to MPLT, as stated above the particular facts of this case are distinguishable from *Matsumoto*.

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[1] The *Chesney* court also did not think the fact that Wyoming being a "lien theory" jurisdiction (like the CNMI) rather than a "title theory" jurisdiction made a difference in whether a mortgagee could pursue a quiet title action. *Chesney*, 244 P. at 220-21 (stating that "[w]e are unable to perceive, however, why the principle there held should apply any the less in a case where a mortgage, as in this state, is considered only a lien.")

d. Neither DPL or NMHC argue that their interest in Lot 011 G 71 is superior to Plaintiffs, making this case appropriate for summary judgment

"Summary judgment may be granted where 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." *Century Insurance Co. v. Hong Kong Entertainment*, 2009 MP 4 ¶ 14. While an investigation of the legal instruments making up the chain of title for Lot 011 G 71 reveals a title clouded by possible interests by DPL and NMHC, DPL and NMHC have not asserted these claims. In fact, the counsels for DPL and NMHC have stated that DPL and NMHC do not have an interest in Lot 011 G 71. The result is that while DPL and NMHC may oppose Summary Judgment, their opposition does not create an issue of material fact. "A fact in contention is considered material only if its determination may affect the outcome of the case." *Triple J Saipan, Inc. v. Agulto*, 2002 MP 11, ¶ 8, (citing *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248-49, (1986).

None of DPL or NMHC's arguments are predicated on a material fact, namely that neither defendant argues they have a property interest in Lot 011 G 71 that is *superior* to that of MPLT, and/or Fitial and Kapileo. DPL, in their response to Plaintiffs' Motion for Summary Judgment filed on August 4, 2025, expressly denies that DPL has a superior claim to Plaintiffs and writes "the Commonwealth does not oppose Plaintiffs' Motion to the extent that it seeks an order determining that Plaintiffs have clear and superior title to Lot No. 011 G 71 as against DPL." *Id.* at 3. NMHC, on the other hand, appears to argue that it has no claim in Lot 011 G 71 at all. (*See* Defendant Northern Mariana Housing Corporation's Legal Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment filed August 4, 2025, "Plaintiffs fail to identify an instrument under which NMHC asserts a claim to the property in question and which "clouds" title to the property").

Defendants DPL and NMHC have stated that they have no interest in Lot 011 G 71. Defendants DPL and NMHC have stated that they do not represent the San Nicolas couple. The San Nicolas couple have long since signed a warranty deed relinquishing any interest in Lot 011 G 71. The only parties that have an interest in Lot 011 G 71 are MPLT and Fitial and Kapileo.

Defendants DPL and NMHC fail to establish a claim superior to MPLT, and/or Fitial and Kapileo in Lot 011 G 71. Thus, the Court finds there is no genuine issue as to any material fact and the Plaintiffs MPLT, Fitial and Kapileo are entitled to a judgment as a matter of law.

III. CONCLUSION

For the foregoing reasons, Plaintiffs Marianas Public Land Trust, Danny Jose O. Fitial and Josephine T. Kapileo' Motion for Summary Judgment is **GRANTED**.

Consequently, the Court enters a declaratory judgment quieting title to Lot 011 G 71 in the names of Danny Jose O. Fitial and Josephine T. Kapileo as fee simple owners of Lot 011 G 71.

Further, the Court enters a declaratory judgment confirming that the fee simple title to Danny Jose O. Fitial and Josephine T. Kapileo is subject to the mortgage loan with Marianas Public Land Trust and is protected against any claims from the Department of Public Lands and the Northern Marianas Housing Corporation asserting a fee simple interest, superior title, or mortgage interest in Lot 011 G 71.

SO ORDERED this 3rd day of October 2025.

/s/
JOSEPH N. CAMACHO, Associate Judge