Third Constitutional Convention

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Saipan, MP 96950

NOTICE OF PUBLIC HEARING

NOTICE DATE: June 13, 1995

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The Committee on Land and Personal Rights of the Third Northern Marianas Constitutional Convention will conduct an initial Public Hearing on **Friday, June 16, 1995**, at 9:00 a.m., at the House Chamber, Capitol Hill, Saipan. The purpose of the public hearing is to hear and receive testimony on **Proposed Amendments to Article XII of the CNMI Constitution.**

The Public Hearing will be open to the general public. Persons wishing to testify are urged to inform the Committee and to submit written testimony to Chairman Jose R. Lifoifoi, office of the Third Constitutional Convention, Legislative Bureau, Capitol Hill, at least 24 hours prior to the scheduled hearing date. In accordance with Rule 30 of the Third Constitutional Convention's Rules of Procedure, no person shall be denied the opportunity to testify for lack of a written statement.

The Committee may schedule additional hearings on Saipan on this subject. The Committee will schedule hearings on Tinian and Rota on dates to be announced.

/s/

DELEGATE JOSE R. LIFOIFOI, CHAIR

DELEGATE MARIAN ALDAN-PIERCE, VICE CHAIR

COMMITTEE EXHIBIT

PUBLIC HEARING: INTRODUCTORY STATEMENT OF THE CHAIR

The Committee on Land and Personal Rights of the Third Northern Marianas Constitutional Convention hereby opens its public hearing on Article 12, dealing with alienation of land in the Commonwealth.

Initial hearing: This is an initial hearing on Article 12. We may have other hearings. The Committee has not yet discussed Article 12 in its meetings. We thought it was important to have public input before we began our discussions so that we can take into account everyone's views when we consider possible amendments to Article 12.

Summary of issues: We have prepared a summary of all the proposals and suggestions we have received about possible amendments to Article 12. We have made that summary available to everyone, so that the comments made at the public hearing this morning can be directed to those possible amendments. When you speak, we do not expect you to give us your views on everything on the summary. We would like you to tell us what changes you think are important to the people of the Commonwealth.

Ground rules: There are certain ground rules for this hearing.

1. Anyone who wishes to be heard will address the Committee from the witness table here next to me. You may approach the witness table and use the microphone only at the invitation of the Chair. When you have finished, you should leave the witness table and return to the audience area so that another person may testify.

2. The audience should be respectful of those who are testifying and should remain quiet while testimony is going on. There will be no cheering or heckling in reaction to a witness or a witness's testimony. We have a lot to cover today and we don't want to waste time.

3. Each individual will be limited to 10 to 15 minutes. If the Committee asks you questions after your presentation, the time will not be limited by the 10-minute rule, however the Chair will determine how long the questioning of any one witness may last.

4. All discussion will be between the Committee and the witness who is testifying. There will be no open debating or arguing between individuals.

5. Witnesses will be allowed to testify only once. There will be no opportunity for rebuttal statements.

6. Witnesses will limit their remarks to Article 12. We are not discussing Article 11 on public lands or Article 14 on natural resources at this hearing. Those will come later in the Committee's work.

Written statements. We realize that there is a lot to say about Article 12 and that many people have extensive experience that cannot be stated in our 10 to 15 minute limit. So we welcome written statements. It is important to get the written statements to the Committee within the next week, however. The Convention has limited time and limited funding, so we are required to get our work in the Committee done expeditiously. The Committee will formulate its recommendation for the Convention within the next two weeks. The Convention will vote soon after that. Our Convention rules prevent last minute changes on the floor, so it is important to get your ideas to us soon. Written statements should be delivered to us here at the Convention's offices.

Transcript: We will have a written transcript of this hearing. Our court reporter, Les Martin, who is sitting here, will be taking down the statements and the questions and answers. He has a computerized system, so the transcript will be available promptly for the Committee's use at its meeting on Monday and throughout next week. We will extract the proposals from the transcript and consider them in our meetings. If you would like your written statements to be a part of the transcript, please submit them by the close of business on June 21, 1995 and we will publish them with the transcript. If you do not want your written statements to be a part of the transcript, just indicate that when you send them to us.

Thank you all for coming, and we will start now with the first witness.

SABLAN EXHIBIT

Testimony on Land Ownership in the CNMI
By: David M. Sablan

June 16, 1995

Chairman Lifoifoi and members of the Committee, I wish to thank you for the opportunity to appear before you to express my views on land matters here in the CNMI. I hope that my testimony would give you and your committee members some "food for thought" as you deliberate on Article XII of our Constitution.

The people of the CNMI have acquired land through various means. Some of us own land through-

(a) Homestead Programs;
(b) ownership of land handed down from our parents;
(c) purchase of land; and
(d) Land Exchange Programs

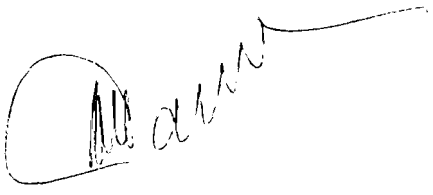
Based on these categories we can determine which categories should have certain restrictive measures and which should not be regulated. I believe that land ownership through the Homestead programs should not be sold or change ownership for at least 10 years from date of acquisition. In other words, land acquired through Homestead Programs should remain in the name of the homesteader for a period of say, ten years.

The remaining categories should not be regulated by the government and the owner should have total control and discretion over his or her land. Article XII of our Constitution has caused many of us severe hardship. Article XII underminds the integrity of the land owners. The land owner is perfectly capably in deciding for himself what he wants to do with his land. The people of the CNMI are matured and are intellegent people and have full understanding of the value of land. Why should the government continue to be paternalistic toward us.

Mr. Chairman, **no one can force me to sell my land if I don't want to sell it**. Conversely, no one can tell me not to sell my property if I don't want to sell it. I know what is best for me and my family. I don't need the government to tell me to sell, or not sell my land. I firmly believe that many of us in the CNMI consider Article XII is a noble thought, but it is not working. Just look at the number of land transactions. Look at the number of "For Lease for 55 Years" signs. Most of our people who sell land are those who are land rich and want to improve their life style by selling land they feel they don't need. In some cases, land transactions tends to circumscribe provisions of our Constitution.

I hope that your committee will objectively do you work and delete the restrictive covenant in our constitution which I feel it is stale and discriminatory.

Respectfully Submitted,



MITCHELL EXHIBIT

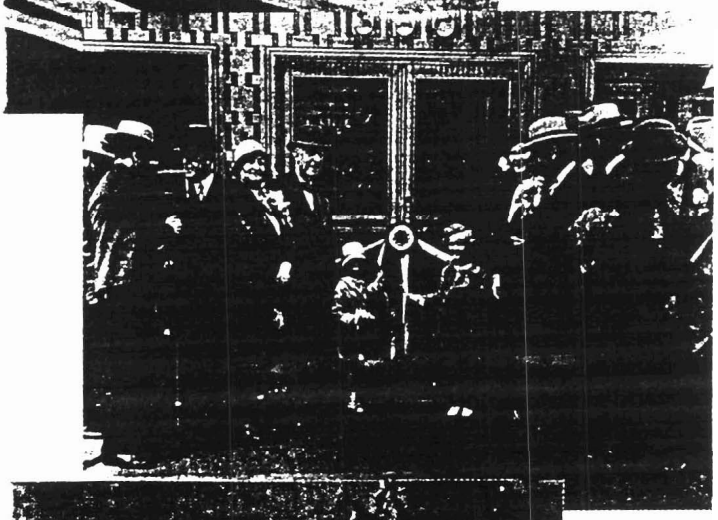
BIG SPENDER

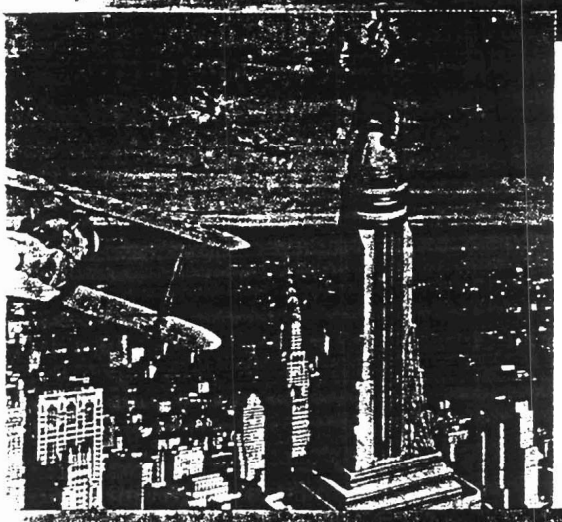
Donald Trump (photographed in New York on March 1, 1995) says he acquired 50 percent of the Empire State Building without paying a penny.

EMPERORS OF THE EAP

"THIS PERFECT LITTLE MAN"—ACCORDING TO DONALD TRUMP

Among the most reviled financiers of postwar Japan, Hideki Yokoi appears to be the true owner of the Empire State Building. Here he is in Tokyo on August 15, 1990, just before being sentenced to three years in prison for negligence that caused one of Japan's worst hotel fires ever.





Tucked behind rusted wrought-iron gates an hour west of downtown Tokyo, the Hachioji Medical Prison has the listless air of a forgotten nursing home. High concrete walls encircle its two wings, where the 260 patients, those too sick or unstable for Japanese prison cells, lie in six-bed wards behind barred windows. Between sips of green tea in his cramped upstairs office, the second-in-command, Yasuo Ueki, chatters on with pride about his aging facility, which has two operating rooms, an intensive-care unit, and now a CAT scanner too. Many of his patients are demented, crippled, or senile, and not one has ever escaped. "These patients are fragile and stay in bed," he beams. "They would have to be very ambitious to climb the high wall and get out of here."

Inside the brown tiled lobby, orderlies and guards in neon-blue uniforms scurry through a sliding barred door to attend to the patients beyond. Back there somewhere lies Hideki Yokoi, the 81-year-old Japanese billionaire who appears to be the true owner of the Empire State Building. One of the most reviled financiers of postwar Japan, Yokoi is finishing the first year of a three-year sentence on charges that he repeatedly ignored warnings to install and upgrade fire equipment at his famed Hotel New Japan—a cost-cutting move that proved disastrous one cold night in February 1982, when the hotel's top two floors burst into flame, killing 33 guests, mostly foreign tourists, in Tokyo's worst fire since the Second World War. The tragedy, and Yokoi's very un-Japanese refusal to take responsibility for it, so dominates his image in Tokyo that few have focused on his less publicized activities, including rumors of dealings with Japanese organized crime, the yakuza. Even fewer remember the evening in 1958 when Yokoi narrowly survived a yakuza assassination attempt.

If you didn't know an unsavory character like Yokoi had managed to buy one of America's most famous landmarks, well, neither did its previous owner Prudential Insurance, which rejected Yokoi's $40 million offer to buy it in 1991. *Vanity Fair* has uncovered evidence that suggests that, by operating secretly through an American shell company, Yokoi in effect stole the Empire State Building. But that's just where this bizarre story begins. In a little-noticed lawsuit filed in Manhattan last fall, Yokoi is now suing his illegitimate daughter Kiiko and her French husband, Jean-Paul Renoir, charging they stole the Empire State Building from *him*, apparently by leaving his name off a set of ownership papers. And then, whether Kiiko and her husband had the legal authority or not, they handed over a sizable interest in the building to none other than Donald Trump.

Strange bedfellows they may be, but Trump and the battling Yokois stand at the center of a nasty four-way struggle now raging for control of the world's most famous skyscraper. Even as they exchange blows with her father, Kiiko and Trump have declared war on no less a foe than Trump's arch-enemy, Leona Helmsley, the legendary Queen of Mean, another recovering 80s figure just now retaking control of her family's real-estate empire after release from a Connecticut federal prison. Why Leona? Because while Trump and the Yokois own the Empire State Building, the Helmsleys have a lease on the landmark building that runs through 2076, and what meager rent they pay

Donald Trump describes the Empire State Building as "du

to the owners dwindles further in the years to come. Unless Trump is able to break the Helmsleys' lease, he and Kiiko stand to make less money than if they had put their money in a savings account.

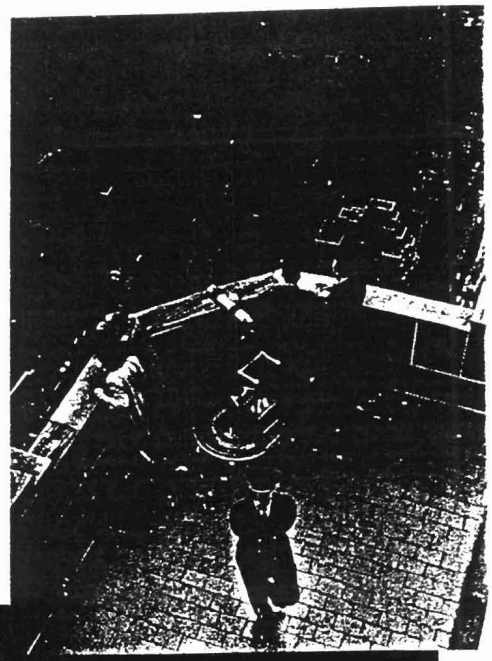
In essence, Trump is acting as a high-class leg breaker, a task he has taken to with characteristic enthusiasm. Backed by battalions of lawyers, private detectives, and building inspectors, he first sued the Helmsleys in February, arguing that Leona's partners had broken dozens of different conditions of their lease, including numerous safety rules. At the same time, Trump resorted to guerrilla tactics by providing support to a group of angry Empire State Building tenants, whose lunchtime protests of what they call substandard conditions in the building have grabbed considerable attention in the New York press. On one recent morning Helmsley security guards nearly came to blows with a local TV crew sent to cover a sidewalk demonstration.

"This building is falling apart," complains Suzy Smith, a secretary on the 56th floor, who spearheads the tenants' effort with the quiet assistance of Trump, who provided the printer she uses to crank out press releases. "We have rats everywhere, they're roaming around. We have homeless people roaming our hallways. We opened the door one morning and there were two men urinating on the wall. There was this big puddle. We had a woman mugged in the building the other day—at nine A.M.! We could hear her screams!"

This, of course, is music to Trump's ears. As he sits in his sun-splashed Fifth Avenue office one morning, there is no mistaking Trump's zeal for the brewing battle with Leona, with whom he has wrangled off and on for two decades. "This building is the worst piece of shit you've ever seen in your life," he says in mock horror. "It's become an embarrassment to the city of New York." And he's just warming up. During our talks, Trump describes the Empire State Building variously as "a dungeon," "Stalag 17," and "a shithouse," while observing that "the tenants down there are living in hell."

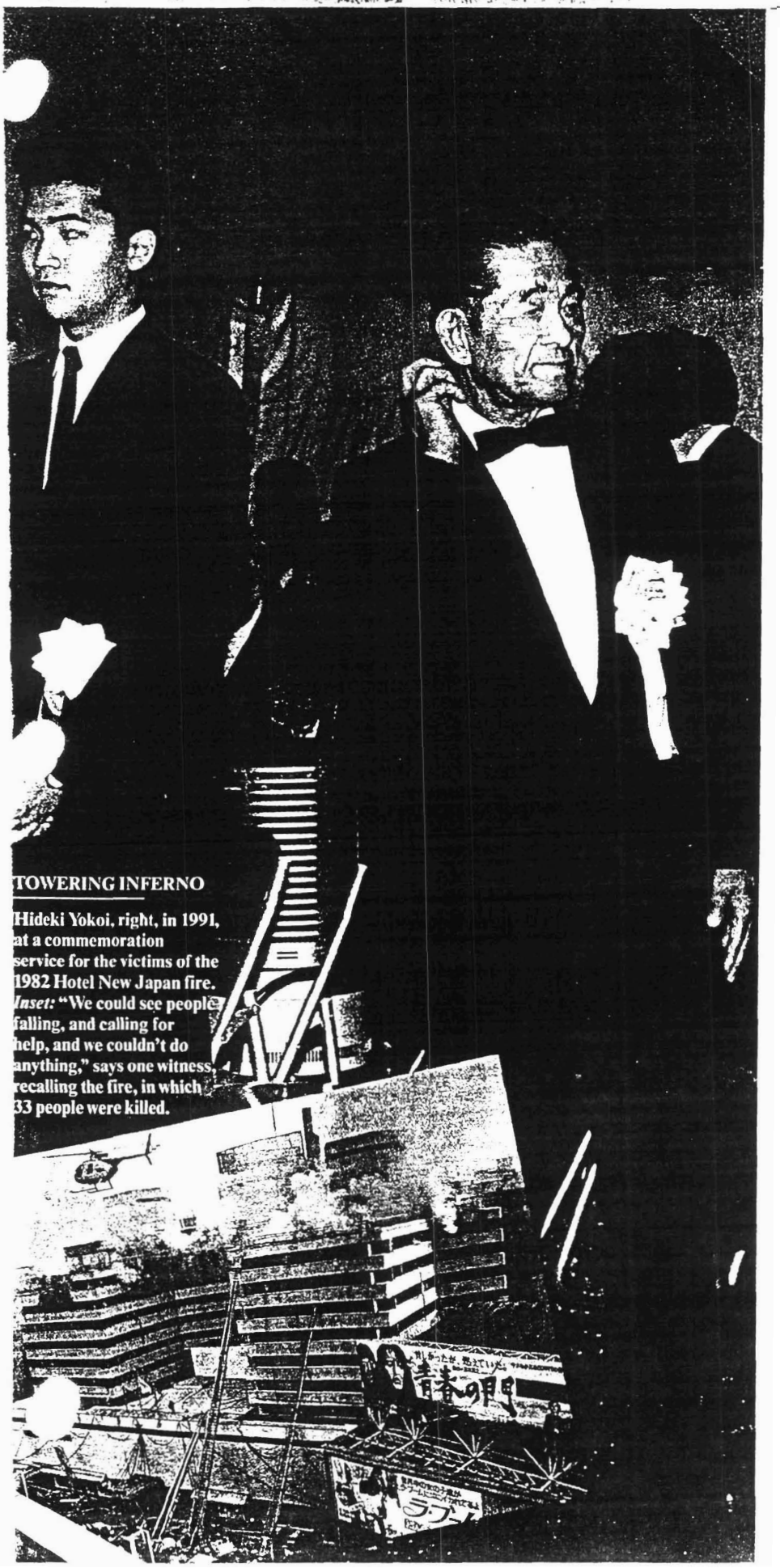
A BUILDING WITH A PAST

Counterclockwise from top left: a classic Lewis Hine image of a member of the derrick crew during construction of the Empire State Building; the ribbon-cutting ceremony in 1931, with former New York governor Alfred E. Smith and his wife at left; King Kong takes to the tower in a last, desperate effort to escape in the classic 1933 movie; the hole in the 78th and 79th floors caused by the crash of a B-25 bomber into the building in 1945, which killed 14 people; Frank Sinatra and Betty Garrett falling in love on the observation deck in *On the Town* (1949); tourists taking in the view in 1947.



Much of this, of course, is Trump's patented brand of hyperbole. While age and the rigors of Manhattan have taken their toll, the Empire State Building is by no means falling apart. Built at the depth of the Depression to be the world's tallest building—a distinction it held until 1970—the grande dame of New York skyscrapers remains a powerful symbol of the city. The sleek gray façade with its graceful setbacks and missile-like tower soars 102 stories to 1,250 feet and still dominates midtown. Windows leak and maintenance crews aren't setting any speed records, but legions of schoolchildren still throng the gleaming marble lobby most mornings on their way to the 86th-floor observation deck. Helmsley executives contest Trump's allegations and flatly deny all stories of vermin and homeless people. To make sure the building survives the next eight decades, the Helmsleys have embarked on a $60 million renovation project, which has been under way since 1990.

Still, the Helmsleys aren't taking Trump lightly. Leona, who has no day-to-day responsibilities at the building, and her husband, Harry, who's



TOWERING INFERNO

Hideki Yokoi, right, in 1991, at a commemoration service for the victims of the 1982 Hotel New Japan fire. *Inset:* "We could see people falling, and calling for help, and we couldn't do anything," says one witness, recalling the fire, in which 33 people were killed.

believed to be suffering from Alzheimer's disease, are leaving the fight to their longtime partner Peter Malkin, an erudite 61-year-old Harvard man whose knotty-pine office on 42nd Street affords a stunning view of the Empire State Building, eight blocks south. Malkin has brought in high-powered attorney Arthur Liman to take aim at what both sides know is Trump's Achilles' heel, his partnership with the bickering Yokoi family. "Our position is that he doesn't own [the building], because the people who sold it to him stole it," Malkin snaps. "He's dealing in stolen property."

Sensing its vulnerability, Trump's camp is doing everything it can to straighten out the Yokois—but so far with little luck. "To have the Empire State Building in the hands of warring Japanese families is absurd," fumes Richard Fischbein, Trump's lead attorney. "What they have inadvertently done is put themselves into a position of fighting over the most recognizable landmark of New York City. You can't do that to the Empire State Building, to New York. And when you mix in Trump, and you mix in Helmsley, they're playing in a game they don't even understand."

The Yokois aren't the only ones in the dark. No one involved in the New York end of the case, from Trump on down, seems to have the first clue what the Japanese family is fighting about. "Nobody's really been able to explain to me what's going on," admits Trump. "I was surprised [by Yokoi's lawsuit], because I'd seen how close the father and daughter were. But I knew the father was in prison, and I know funny things can happen, mentally, when you're put in the can." Even Henry Bubel, the New York lawyer representing Yokoi's daughter Kiiko, is at a loss to explain the case. He says the elderly Yokoi is in fact a beneficiary of the family trust that owns the skyscraper, and says the lawsuit is a "terrible misunderstanding," apparently not the first inside Yokoi's colorful family, which at last count includes 19 children, at least 11 of whom are illegitimate.

PHOTOGRAPH BY TAKASHI HOTTA

Japanese families is absurd," fumes Trump's attorney.

"If these people were Americans," sighs Bubel, "Judith Krantz would be writing a novel about them."

Every time a prime piece of American real estate gets snatched up by a Tokyo-based firm, it is always the same. In newspapers, on talk shows, at cocktail parties, it's "the Japanese" who bought it. "The Japanese" bought Rockefeller Center. "The Japanese" bought Pebble Beach. "The Japanese" bought the Columbia and MCA/Universal movie studios. Well, "the Japanese" didn't buy the Empire State Building. Hideki Yokoi and his oddball family did.

To fathom Yokoi's notoriety in Japan, just visit the building that serves as his unsightly legacy. The once elegant Hotel New Japan, a jewel of Tokyo's reconstruction efforts after the Second World War, now sprawls eerily abandoned on one of downtown's busiest streets. Untouched since the night its top two floors burned 13 years ago, the building still bears scorch marks on its grimy white brick façade; windows on the upper floors remain covered by worn brown boards. A tattered, sepia-toned canopy, flanked by piles of wreckage and shattered windows, hangs behind barbed wire in the parking lot below. My guide shudders at the memories the old hotel conjurs. "It was all televised," she murmurs. "We could see people falling, and calling for help, and we couldn't do anything."

Yokoi bought the hotel from a former Japanese foreign minister in 1979, in what the Tokyo press interpreted as a last-gasp attempt at respectability. But the fire, followed by Yokoi's conviction on negligence charges—not to mention the hardball tactics he used to forge settlements with survivors—enshrined him as one of the country's true villains. YOKOI: A MAN HATED FOR EIGHTY YEARS, blared one headline.

"He is not the kind of guy we know how to deal with in Japanese business," says Yasuo Hariki, a Tokyo business editor who has known Yokoi for nearly 40 years. "He's very anti-traditional. You know, there's never been a company president sent to jail before this. His family, everyone, believed he would get probation. But because of his bad reputation, the judges went very tough on him."

In person there's little demonic about Yokoi. A small man, about five feet five inches, with black hair slicked back and parted down the middle, he is a natty dresser known for his trademark bow ties—clip-ons, says Hariki. Yet even before the fire, Yokoi was everything the Japanese hate: a wolverine-like renegade with no regard for custom, a bully who profits from intimidation, a tax cheat (fined in 1986 and 1987), a philanderer (four known mistresses and counting), and a debtor who always seemed to be at war with his lenders. Worse, he was flamboyant, tooling around in big, chauffeur-driven Cadillacs and, it's said, planning for his eventual demise by building an immense mausoleum complete with chandeliers.

"He is a terrible man, not just in business, but as a person he is irresponsible," says Kozo Ikeda, editor of the leading Tokyo business magazine, *Zaikai*.

Much of the outrage Yokoi inspires arises from the Japanese loathing of financial speculation. In a country where hostile takeovers are all but unknown, Yokoi may have been Japan's first postwar greenmailer, silently amassing stakes in a series of companies before striking deals for his shares. (That was how he bought the Hotel New Japan.) In New York, greenmail is frowned upon. In tradition-bound Tokyo, it is virtually criminal—though greenmail and even more sinister practices flourish in secret. Such top brokerages as Nomura and Nikko Securities have been embroiled in scandals for dealings with yakuza groups, and there's a long history of companies' paying protection money to syndicates and hiring yakuza bodyguards. An entire class of small-time gangster "strong arms," the *sokaiya*, specializes in disrupting annual meetings—unless, of course, they are paid off.

Financial speculation of all kinds, in fact, has come to be associated with yakuza groups, who operate far more brazenly than their American Mafia counterparts. Until recently many yakuza groups met in clearly marked headquarters. After recent crackdowns many have begun recasting themselves as corporations; the third-largest group, the Inagawakai, for instance, has become Inagawa Industries.

During Japan's wild 1980s "bubble economy," yakuza groups piled into real estate and the stock market and muscled companies into all sorts of questionable deals. "The Japanese financial world is just so dirty," says an American financial reporter in Tokyo. "It's a twilight world. There's just so much shady dealing. Greenmail is just another kind of blackmail. There's so much pressure applied. They hire gangsters to walk around the hallways of businesses, embarrassing people or slowing down the work. I can't say Yokoi has done any of this, but the crowd he runs with certainly has."

Yokoi has been an outsider since he arrived in Tokyo in 1930, a 15-year-old street vendor fleeing the poverty of a provincial village and, it's said, an alcoholic father. His first venture was hawking underwear with his friend Mitsuo Hishida by bicycle to retailers. "We used to pack such heavy bags of underpants that the bicycles lost balance and we fell over," laughs the 74-year-old Hishida, who has served as Yokoi's right-hand man since 1937.

A distinguished-looking executive whose pink cheeks and forehead are mottled with liver spots, Hishida agreed to a rare interview at his attorney's office in an immaculate conference room high above downtown Tokyo. "He had a younger brother with polio and two sisters, so Yokoi-san was the one who supported the whole family—it was what drove him," says Hishida. They couldn't afford a flat with running water, so at night the two friends retreated to public baths, where they washed each other's backs and dreamed of future riches.

Twice in the 1930s, Yokoi was called

LARGE PHOTOGRAPH BY TAKASHI HOTTA

to army service in China, returning home with awards for marksmanship. In 1942, in the wake of Pearl Harbor, Hishida followed, only to languish in a Soviet P.O.W. camp in Siberia for eight years. Returning in 1949, he found Yokoi thriving, the owner of a six-story building in the Nihonbashi section of Tokyo crammed with 200 workers turning out draperies and carpeting for the homes of American servicemen. In later years stories spread that Yokoi had made a small fortune bilking the U.S. military via fake billings. Whatever the truth, he did well enough to buy a second building, in the fashionable Ginza shopping district, where he soon opened a "dollar-only" department store targeted at cash-rich G.I.'s.

"We used to show up at five in the morning [to open the store], and there would be a thousand people out waiting," remembers Hishida. "You could use only American dollars, so the Japanese went and got dollars on the black market and came here to do shopping."

At first, Yokoi took his mushrooming profits and snapped up choice bits of real estate around Tokyo. Then, in 952, in an epic fight still remembered in Japanese business circles, he launched his first takeover raid, against Tokyo's huge Shirokiya department store, which Yokoi felt was poorly managed. After a grueling, three-year slugfest he lost, but his terrier-like intensity caught the eye of Keita Goto, the powerful chairman of the Tokyu department-store chain. In the ensuing years Yokoi attacked a series of Japanese companies, including several of Tokyu's competitors—battles Hishida now acknowledges were secretly funded by Goto, who didn't dare engage in such nontraditional behavior himself.

Loathed by many, respected by others, Yokoi was considered one of Japan's most daring young investors when, one night in June 1958, a gunman suddenly burst into his Ginza office and began shooting. Hishida was sitting beside Yokoi when it happened. A third man, a visitor, dived under Yokoi's desk. One bullet struck Yokoi in the left arm and ricocheted into his chest. Badly wounded, Yokoi lurched from his chair, chased the thug to the elevator, and then collapsed in a pool of blood. Hishida raced after him, telephoned the hospital, and rode with him in the ambulance.

"I have never spoken of this before to anyone, not even my lawyer," says Hishida, grinning nervously. "The doctor said he couldn't guarantee his life. They cut him open from his throat down to his navel, and across his chest, too. And they couldn't find the bullet. They couldn't find it! So they just stitched [him] back up. And later the X-ray showed the bullet is half hidden in his left lung. Even today the bullet is still there. Nobody knows that. Even his own children don't know that."

The shooting grabbed national headlines, the more so when a yakuza gangster was arrested and convicted of ordering it. Noboru Ando, head of the Ando-gumi crime group, told his story to a Tokyo magazine two decades later. According to Ando, he had once worked for Yokoi, presumably as a bodyguard, during the Shirokiya fight. When Yokoi welshed on a loan from a Japanese duke, the man's family hired Ando to get its money back. In Ando's telling, Yokoi not only refused to repay the money but also insulted him, calling him a "punk yakuza." Outraged, Ando says, he sent one of his thugs back to Yokoi's office to avenge his name.

Yokoi never publicly spoke of the incident. But another explanation soon made the rounds. "[Yokoi] went into business collecting money with some yakuza," claims Yasuo Hariki. "Knowing Yokoi's style, I assume the yakuza was getting a very small share. That's why he was shot." (In an odd postscript, Ando went on to become a minor celebrity following his release from prison, starring in a series of B movies based on his yakuza exploits.)

It was by no means the last time Yokoi's name was mentioned in the same breath as the yakuza's. As recently as 1991, the year he secretly took control of the Empire State Building, a Tokyo magazine named him as a probable conduit for information between Nomura Securities and the Inagawakai. "He has not been regarded as yakuza, not a criminal, but he's been known to do deals with the yakuza, with yakuza financing," says Henry Bubel.

"Yokoi's way of doing business is very unsophisticated—he is very rough, very tough," explains Hariki. "His opponents depend on yakuza, of course, so he tries to get stronger, more powerful yakuza. He goes right to the top."

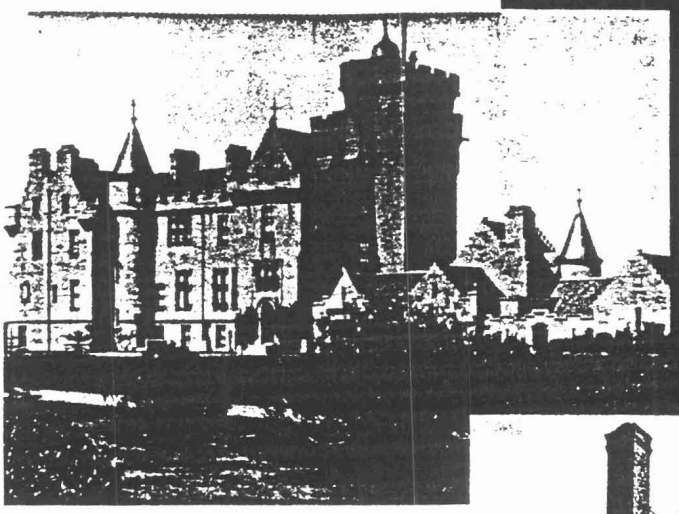
For all the talk, however, no concrete links between Yokoi and yakuza gangsters have been proved. Hishida brushes aside the stories with a smile. "Sure, it's been rumored widely, but I strongly deny it," he says. "Once we get some kind of tie with those kind of people, it's almost impossible to cut it. So Yokoi would have nothing to do with them. Those people never came into the office."

During the 1960s and 1970s, Yokoi branched out into all manner of businesses—sugar, shipping, bowling alleys, and nightclubs—while mounting regular takeover raids. But it was his private life that hogged the headlines. He was reported to have fathered children by a number of actresses and models, including a Miss Yokohama, who gave him a baby boy in 1968; a cabaret dancer, who gave him a baby daughter in 1952; and another beauty queen, with whom he had a baby girl in the mid-1970s. A number of these women, it's said, hold sway at Yokoi's offices near the Imperial Palace, in what one Japanese reporter describes as "a very firmly established hierarchy, like an old-style harem." Into his 70s, Yokoi was said to be living with a 25-year-old actress and exerting considerable effort to get their baby daughter into a prestigious kindergarten.

Deconstructing the Yokoi family is a dicey business. According to a family attorney, there are 19 known children, who fall into four categories. Two sons are "of the marriage," born

BOTTOM INSET BY TOBIAS EVERKE

Some Japanese bought golf courses. Some bought



DAUGHTER DEAREST

Hideko Yokoi is suing his illegitimate daughter Kiiko Nakahara for allegedly stealing the Empire State Building from him. Back when they were speaking to each other, father and daughter bought such historic estates as Glenapp Castle in Scotland (*left*) and the château in Rosny-sur-Seine in France (*below*). French authorities have now filed charges against Yokoi's son-in-law for neglecting and looting the properties.

to Yokoi's wife, Michiko, who is said to be alive but on a respirator. The elder son, Kunihiko, is known in gossip columns for an 80-day marriage to a Japanese actress and a collection of 17 foreign cars. Two other children are adopted and assumed to be the offspring of Yokoi mistresses. Four others, including Kiiko, are illegitimate but recognized by Yokoi as his own. Another 11, or maybe more, are illegitimate and unrecognized. "None of these children were raised together," says the attorney. Of the recognized children, "seven of eight are from different mothers, maybe eight of eight."

The mistresses, the flashy cars, the nightclubs, the shadowy financial dealings—all contributed to a reputation Yokoi has tried to shed in vain. "Yokoi-san certainly wanted to be accepted at the top of the Japanese business world, [but] when he bought Hotel New Japan, the Japanese business community was very opposed, because the owners of prestigious hotels should be prestigious people," explains Kozo Ikeda. "The acquisition of Hotel New Japan was really the turning point in Yokoi's career—if he could succeed in managing Hotel New Japan, he could turn around his reputation. But because of his nature—he's so greedy—he lost

OUR KIND OF PERSON

Fearing Yokoi might be a gangster, Prudential refused to sell the Empire State Building to him, so American blueblood Oliver Grace Jr. (*inset; above*), great-grandson of onetime New York mayor William R. Grace, served as a front man, according to Donald Trump.

BOTTOM INSET BY TOBIAS EVERKE

S[illegible]-E-E'S BACK!

Leona Helmsley contends that the Empire State Building is fit for a queen, and, in fact, the Helmsley organization is spending $60 million to make sure that it is.

the opportunity. All that remained were his bad footprints in the shady business world."

The fire, started by a British tourist smoking in bed, ended whatever hopes Yokoi had of escaping his past. After he was indicted and convicted at trial—and released on bail pending appeal—the charred building simply sat empty. According to Kazuomi Yamaguchi, a writer with the *Shukan Asahi Weekly* magazine, repairs were prevented in part by a maze of competing claims of ownership, including those of several purported yakuza gangsters who had purchased rooms in the hotel as condominiums.

In the wake of the fire, a new face appeared at Yokoi's offices. Her name was Kiiko Nakahara, and she was one of Yokoi's daughters, but one so obscure that even Hishida didn't know her. "I knew about most of the children, but not Kiiko," he says. "Until the fire, I had never even heard her name." Kiiko, then in her mid-30s, was a little-known designer with a boutique in Tokyo's hip Roppongi section. Quiet and full-figured, she specialized in designing uniforms; among her contracts, friends say, was one for United Airlines' flight attendants' outfits. Kiiko, whose mother was one of Yokoi's earliest mistresses, had fallen out with her father at some point and still harbored some bitterness over their estrangement. "He didn't do anything for me when I was little," she sniped in brief comments to a Tokyo newspaper in 1985. "I couldn't even pay for my lunch fee at school. I could hate him. How could I have sympathy for him?"

Money heals all wounds, they say, and by the mid-1980s Yokoi was swimming in yen. In a supreme irony, the Hotel New Japan had been transformed into one of the most valuable pieces of real estate in the world. By standing empty it had become that unbelievably rare commodity—an undeveloped lot in Tokyo. In 1987, near the height of the bubble economy, the lot was valued at an astounding $1.8 billion, making Yokoi worth as

he is doing business with a purported crime figure.

much as $2 billion, enough for *Forbes* to list him among the world's richest men. When other Japanese magnates began using their newfound fortunes to snap up choice properties all over the world, Yokoi—perhaps with mounting legal claims from the fire in mind—joined the rush to move money overseas.

Some Japanese bought golf courses. Some bought shopping malls. Yokoi bought castles. According to Hishida, it was Kiiko's idea. Because she spoke English and had traveled overseas, Kiiko became her father's scout, touring and photographing the finest estates and castles of Western Europe, then returning to Tokyo to allow her father to select his favorites. Those Kiiko didn't find, Yokoi ordered from real-estate catalogues, sight unseen. At the height of their buying spree, father and daughter had acquired 15 deluxe properties, mostly castles, all in France except for three outside London, and one each in Scotland and Spain. One was Thames Park in Oxfordshire, where parts of *The Madness of King George* were filmed. Another, Glenapp Castle, built in 1870, has been called one of Scotland's greatest treasures. Although Kiiko took Juniper Hill, in Oxfordshire, for herself, Yokoi had little use for any of the estates; in fact, he never visited a single one. By most accounts, he has never set foot in Europe.

Financial details were sometimes handled by Kiiko's husband, Jean-Paul Renoir, the chairman of Lehman Brothers Asset Management in Tokyo until his resignation in 1992. Renoir is an urbane international banker with degrees from Johns Hopkins and New York Universities, who, friends say, met Kiiko in the early 1980s in London, where he worked with Middle Eastern clients for American Express Bank. Former colleagues remember Renoir as quiet, forceful, and fit, an exercise fanatic who jogged the desert hills of Oman while co-workers huddled in front of air conditioners. "He was built out of steel," says one. "He lived on a diet of grapes and cheese and exercise."

After Renoir transferred to Tokyo, he and Kiiko married and moved into a small but elegant apartment in Roppongi, where Kiiko's own paintings lined the walls. "They were not flamboyant, flashy people, not at all the types to turn up in pink Cadillacs and Rolls-Royces," says a friend. "Kiiko was quite traditional in some ways. I remember having dinner with them one night—Kiiko cooked fabulous Japanese food—and we had the [toughest] job persuading her to sit at the table and eat it with us. She was a very interesting blend of modern and traditional Japanese woman."

For years Yokoi's castles lay unoccupied and, it's alleged, unmaintained. Kiiko and Renoir took to calling them "ghost houses." In time local officials near several of the estates began to grumble about decaying conditions, including unmowed lawns, unpaid groundskeepers, and leaky roofs. In the early 1990s, their concerns grew into alarm when Yokoi began showing signs of financial strain as the value of his real estate plummeted following the collapse of the Japanese economy. At Glenapp Castle, rainwater poured into the dining room, which caused floorboards to rot and saturated antique rugs. There was no money for heating oil, electricity, or general maintenance. By 1992 a Scottish member of Parliament had been forced to take up the castle's cause, writing the Japanese ambassador in an effort to save it. Reached by a Scottish paper, Renoir said he'd had no idea the castle was in need of repairs.

Far worse is the situation in France, where Renoir has been indicted on charges that he tried to loot some of the Yokoi estates of their antique furniture, paintings, *objets d'art,* and tapestries—all considered historic objects strictly protected under French law. At several of the properties, including the Château de Sully in Rosny-sur-Seine, Ministry of Culture officials have intervened to force maintenance and prevent the moving or selling of protected objects. In 1992 the mayor of Rosny-sur-Seine succeeded in having an official complaint filed against Renoir and an English antiques expert, charging them with "destroying, mutilating, and defacing" a historic building after a garden temple was dismantled and moved and other items were put up for auction. French authorities, who at one point issued a warrant for Renoir's arrest, were hindered in their investigation until discovering that Renoir was not his real name; it was Perez. (Henry Bubel says the accusations against Renoir don't constitute a criminal indictment, but rather an investigation.) Renoir has hired Jacques Vergès, the radical Paris lawyer whose clients include the terrorist Carlos the Jackal, to defend him. All Yokoi's European properties are now said to be for sale, and the Scotland castle was sold last year.

It was against this backdrop in 1991, as rumors flew about his financial condition and Japanese creditors clamored to be paid, that Yokoi read an intriguing item in a Tokyo newspaper. The Empire State Building had just been put up for sale. It was a building, Yokoi told Hishida excitedly, that he had always yearned to have.

On May 1, 1931, President Herbert Hoover pressed a button in the Oval Office and the first lights flashed on in the grand marble lobby of the Empire State Building, newly erected on the site of the old Waldorf-Astoria at the corner of Fifth Avenue and 34th Street. The story of its construction is dominated by those "bigger, better, faster" records that Americans loved to tally: 60,000 tons of steel, enough to lay a railroad from New York to Miami; 15 million feet of phone cable; 200,000 cubic feet of Indiana limestone; 1,000 miles of steel wire for the elevators; 6,500 windows; 10 million bricks. During the Depression the building remained largely vacant—giving rise to the nickname the "Empty State Building"—but later, as New York City real estate boomed, it became, both aesthetically and financially, the prototype for the successful skyscraper.

In 1961, Harry Helmsley and his partners negotiated *(Continued on page 162)*

DAFYDD JONES

Martin Amis

The difference was that I could write; without that, I'd have been in as much trouble as they. I've had to force myself to act, and I *have* acted. And eventually one gets inured to change."

After all the midlife anguish that provoked the winter of the advance, Amis's raise, it seems likely, will go to the simple exigencies of child support and setting up a new life. He and Isabel are, in fact, in the process of buying a house on Regent's Park, on the street where Kingsley lives. "It's a very long street," Amis says, "certainly farther than he could walk from one house to another."

In the fallout, Amis's friends have supported him strongly. Rushdie, among others, divides the advance by the five years Amis spent on the book, and finds it a modest salary for one of England's best writers. McEwan decries the English resentment of success, and discerns "a kind of anti-intellectual streak in all this, as well as the last vestiges of a romanticism that requires writers to live in a Chatterton-like garret." As for Byatt, who stirred the press to such a lather, she has, according to Amis, written him to apologize.

The question now is how the flap will affect critics, who may be tempted to review the advance instead of the book, and readers, who may be drawn by the publicity—or not. Amis, meanwhile, is gearing up for accusations that he stage-managed the whole affair: the ultimate postmodern twist.

Does he, I wonder, at least feel he's won more than he's lost?

"Too early to tell," Amis replies.

"But it's not a clear victory, is it?"

"A victory over what?"

"It's not all you wanted."

"No," Amis says. "There's nothing clean about it. I do feel I know more about where I stand professionally. And I don't mean I'm worth that money. It's not the money, it's getting something straight."

"Is the midlife crisis over?"

He laughs. "Jesus, I hope so."

"And are you happy?"

"Yeah. Happier than I've been for a long while, in some ways. Sadder in others. But I did feel very much that this last thing, and the break with Pat, pushed me up against my limit.

"So I'm depressed about that, and depressed about Julian. But what I really feel is that I want to get writing again."

Amis even has an idea. A volume of autobiography about this last year, with the emphasis on the dental aspect. Seriously. "It's a good image for everything else," he says. "It would be provisionally titled *Open Wide.* Subtitled *I Can Take This if You Can."* □

Empire State

(Continued from page 129) a 114-year lease with the building's owner, Prudential Insurance, that featured rent payments that declined sharply over time. This meant that when Prudential went to sell the building in 1991 the Helmsleys' lease was paying a return of barely 5 percent. As Greg White, leader of the Salomon Brothers investment-banking team hired to run the auction, told Prudential executives, it looked like a hard sell. They might get strong bids based on the building's name recognition, or they might get very low bids based on the poor rental income.

"What we were selling was as much smoke as cash flow," says a member of White's team. "Clearly part of [buying the building] was an ego play. I remember one offshore investor wanted to use it on the masthead of everything he did around the globe as an identity factor. . . . [Another] guy was going to auction 'literary work' for over $100 million to buy it. You weren't quite sure whether he was in a mental institute or for real. This was the kind of famous building that elicited anything and everything."

And so White's people weren't surprised when a Frenchman named Jean-Paul Renoir, representing a wealthy Japanese family that wished to remain anonymous, called to arrange a meeting. Renoir arrived in White's offices with Kiiko, who mostly remained silent, and a portfolio brimming with photos of European castles. "They came in and talked about a strategy to buy all these castles around the globe," says the member of White's team. "The Empire State Building was just one more in a line of castles. It sounds extraordinarily odd, but in the context of this building, nothing was going to surprise us."

When final bids arrived in the summer of 1991, Renoir topped the list, offering $40 million. Strangely, one team member recalls, Renoir resisted disclosing the family's identity until moments before signing the purchase agreement, which was final pending Prudential's approval and a background check on Renoir and his investors. The background check was considered crucial to Prudential's image-conscious executives. "Prudential was very sensitive," says the team member, "and didn't want to be selling to an entity it wouldn't otherwise be doing business with."

The name Hideki Yokoi meant nothing to White's people. They directed their first questions to an executive in Salomon's Tokyo real-estate operation, Norio Mutai, who had dealt with Yokoi during the bidding and who had a large commission riding on the deal. But even before Salomon Tokyo could respond, White and his colleagues found news articles about the Hotel New Japan fire in a Nexis search. Worried, White alerted Prudential, then angrily telephoned Mutai in Tokyo.

"We said, 'How come we never heard this before? What's the story?'" remembers a Salomon executive in New York. "A day or two later they came clean. They admitted his reputation was hardly consistent with the parameters the Pru wanted. We had to have someone who would pass the smell test, and he clearly didn't. There was never anything discovered that was factual. It was just innuendo, hearsay, comments. There were just a lot of question marks. And it was clear we would get no answers."

The one word that froze on everyone's lips was "yakuza." Nearing panic, White broke the news to Kurt Reich, the senior Prudential executive involved in the sale, who swiftly killed the deal. Recriminations broke out everywhere. Prudential wanted to fire Salomon. Deeply embarrassed, White wanted to strangle his colleagues in Tokyo. Renoir alone remained calm, seemingly taking news of the canceled deal in stride. His suggestion that Kiiko buy the building instead of her father was politely rebuffed. The Salomon team was left to collapse in relief, believing they had narrowly avoided the ignominy of selling a major American landmark to someone who may or may not have been a Japanese gangster.

Assuring Prudential executives they could quickly find a new buyer, White's team raced to contact the runners-up, at the same time throwing out new overtures to anyone who might conceivably bid. They were joined by Richard Sachs, a member of the Salomon department that catered to wealthy individuals. Sachs knew his clients loved to be offered expensive baubles like the Empire

State Building, if only for the privilege of bragging during cocktail chatter that they had "passed" on it. Now and then one of his group's calls led to something big, as when Salomon sold the Dallas Cowboys to Arkansas oilman Jerry Jones.

This time Sachs appeared to get lucky. He contacted the auction team with a new name, Oliver Grace Jr., a Wall Street investor who seemed interested. The 38-year-old Grace and his brother, John, had made names for themselves during a series of takeover raids on undervalued mutual funds in the late 1980s. Sometimes partnered with Thomas B. Pickens III, son of famed raider T. Boone Pickens, the Graces swooped down on their wounded prey, bought up bushels of stock, then made millions either by forcing restructurings or by selling out during the stock's inevitable rise. *Business Week* dubbed them "the Brat Pack of the corporate world." The British press preferred the term "bloodsuckers."

Despite his sometimes brutal tactics, Oliver Grace's blue-blooded pedigree impressed the Salomon team. A second cousin of industrialist Peter Grace and a great-grandson of William R. Grace, a onetime mayor of New York, Grace sat atop a war chest of $200 million raised from wealthy relatives and chums from Manhattan's Buckley School, and Georgetown and Vanderbilt Universities. Oliver Grace Sr. was a well-known Wall Street banker who had made his fortune buying cut-rate Japanese bonds after the Second World War.

"Believe me, we did quite a bit of checking on Grace, and he checked out," says the Salomon team member. "Smart, tough, and clean. We called family, relatives. After the last time, the one thing we were not going to do was leave some stone unturned. Everybody who ever knew him was phoned."

Approved by Salomon, Oliver Grace closed his purchase of the Empire State Building on November 27, 1991, amid unusually intense secrecy. Everyone involved in the sale, including executives at Prudential and Salomon, signed pledges not to disclose Grace's name. Even Peter Malkin's managers at the building itself weren't told who their new landlord was. *The Wall Street Journal* got wind of the sale and ran an article, but it too couldn't learn the mystery buyer's identity. Not until two months later did the *Journal* report that the buyer appeared to be Grace, who tersely fibbed to the paper, "I know nothing about that. . . . I don't want to comment."

Why all the secrecy?

Maybe because Grace didn't want to explain a wire transfer his holding company had received November 20, exactly one week before his closing. The transfer, drawn on an account at Osaka Bank, was for $29.5 million, and it came from Nippon Sangyo, a company controlled by Hideki Yokoi.

I stumbled upon this payment while perusing hundreds of checks and wire transfers listed as exhibits in Yokoi's lawsuit against the Renoirs, and wondered: Did Grace act as a front for Yokoi as a way to get around Prudential? Grace's attorneys won't discuss any contacts with Yokoi. But, surprisingly, Donald Trump will.

Donald Trump hosts (clockwise starting at Trump's left) Kiiko, an unidentified guest, London *Sunday Times* New York correspondent Geordie Greig, Jean-Paul Renoir, Miramax's Ivana Lowell, journalist Ivan Fallon, and an unidentified guest.

"Grace was a vehicle for them," Trump confirms. "He bought it for them because they couldn't. That's the guy's 14 seconds of fame, 15 minutes, whatever." Yokoi's American lawyer, Steven Rosen, discovered the secret payment only after agreeing to represent Yokoi. "I think Renoir knew Grace and got him to do it," Rosen speculates. "They made an arrangement with Grace."

So it seems. None of the Prudential or Salomon executives involved in the deal will discuss it on the record. Rick Matthews, public-relations director at Prudential headquarters in Newark, New Jersey, says only, "When we did the deal with Mr. Grace, we had every reason to believe he was investing for his own portfolio." But privately a number of those involved said they were stunned to learn of Yokoi's payment to Grace. "That's remarkable—are you sure?" a Salomon banker blurts out. "Is that illegal?"

In Tokyo, Mitsuo Hishida smiles awkwardly and glances at his attorney when the question of Yokoi's secret payment to Grace is raised. "How did you get that?" Hishida asks when shown a copy of the payment schedule. Told it was included in court papers, he smiles again and strokes his chin. "The lawsuit? This is open to the public?" Another glance at the attorney. "In Japan, we cannot get this at court. In the U.S., this is public?"

After a long, whispered aside, the lawyer weighs in. "Certainly, the payment was made in '91," he intones. "So, yes, on Yokoi's side, our understanding was we acquired this in 1991."

Officially, Oliver Grace owned the Empire State Building until he sold it to a Yokoi shell company in May 1993, presumably waiting 18 months to further the impression that he was an independent buyer. No announcement of the second sale was made, either in Tokyo or in New York. Peter Malkin's people at the building weren't even told it had been resold.

Soon after, when Yokoi began bragging of the purchase to his creditors, rumors of his boasts reached a Japanese magazine reporter, Akihiko Nakanishi. Nakanishi broke news of the acquisition that summer, but the article went unnoticed outside Tokyo. In fact, neither Yokoi's nor Kiiko's name surfaced in the U.S. press until July 1994, when Donald Trump announced he had acquired a 50 percent stake in the Empire State Building from a group of "wealthy Asian and European investors." Under the vague terms of the deal, Trump boasted with typical fanfare, he hadn't paid a penny. "I intend," he concluded, "to make my position worth a fortune."

Trump says his involvement with the Yokois began innocently enough, via an unsolicited phone call from Renoir in early 1993. He had heard rumors about Renoir's involvement in the Empire State

Building sale and, after having him checked out, agreed to meet with him. But Renoir wanted to discuss the idea of Trump investing with Yokoi in Tokyo, where the Hotel New Japan stood empty, not New York. Yokoi's creditors were on the verge of seizing the hotel, and he was increasingly desperate to develop the site.

"He told me, 'We have the Trump Tower site of Tokyo,' just a fabulous site, and explained the situation," Trump recalls. "So I said, 'Well, you have a closed hotel that's going to be destroyed, $1.8 billion in debt, so I have to pay $600 million just for the land. I guess it better be a great site.'"

What Trump saw at first glance he liked—so much so that, in a May 1993 letter to Yokoi, he proposed building what he dubbed "Trump Tower Tokyo," a "deluxe building of over 30 stories" on the Hotel New Japan site. The new building's board, Trump wrote, would consist of Yokoi as chairman, Trump as C.E.O., and Kiiko as executive vice president. In return, Trump would help renegotiate Yokoi's debt. "If you agree," Trump wrote, "we can proceed with the project immediately."

But, as Trump tells the story, all was not as it seemed. "Let me tell you, I had no interest in the Hotel New Japan," he tells me. "After I studied it for nine seconds, I realized it was going to be a tough deal. I kept talking about the Empire State Building. Coming from Queens, owning the Empire State Building is kind of cool."

His idea, Trump says now, was to befriend Yokoi with talk of a Hotel New Japan rescue package, then use his newfound leverage to forge a deal for the Empire State Building. With that in mind, he and his wife, Marla, flew to Tokyo that August, where Yokoi put them up at the Imperial Hotel. Alerted by Renoir, who acted as Trump's unofficial press agent, Japanese newspapers speculated eagerly about what Trump wanted in Tokyo, and assigned photographers to trail him through the streets. But, for all the speculation, no one figured out he had come to see one man, Hideki Yokoi.

When the two finally met, as Trump tells it, it was love at first sight. "I got along with this man so incredibly well, it was like a bonding, and we didn't even speak the same language," says Trump. "He was just this perfect little man. Perfect face. Perfect haircut. The perfect shirt, the perfect blue pin-striped suit. I mean, a perfect picture of an elderly man."

In his attorney's office in Tokyo, Hishida likewise has fond memories of the Trump visit. He pulls out several red photo albums packed with pictures of the small dinner party Yokoi held for Trump. "Trump-san! Here! Trump-san!" he says, pointing excitedly. Here are Donald and Marla toasting Yokoi. Donald standing with his arm wrapped around Yokoi, who is wearing a small green bow tie. Donald leaning low, smiling tentatively, and clasping Kiiko.

> "Tell Mr. Trump not to go too deeply into business with Kiiko. His reputation will be worse . . ."

Trump, who during our interview repeatedly calls his would-be partner "Mr. Nikkoi," feels Yokoi has gotten a bum rap in Japan. "This is not a bad human being, this Mr. Nikkoi," he says. "I found him to be a fascinating and a very nice man. [After the fire] he did not commit hara-kiri, he did not accept blame. For that they hate him. [People] think, He's in jail, therefore Mr. Nikkoi is a Japanese mobster. He's not. He's a real-estate guy, very respected."

When Trump met with Yokoi's creditors, however, he found they didn't share his opinion. As Trump tells it, he used the creditors' animosity as an excuse to derail any immediate deal for the Hotel New Japan. "I saw immediately that there was such incredible hatred for Yokoi [among the creditors] that we wouldn't ever get a deal," he says. "Yokoi's people were saying, 'They'll never foreclose, not on a Japanese citizen.' [I said], 'Well, I just left a creditor, and they have one thing in mind, to destroy this guy.'" At that point, Trump says, he changed his tune. "I said, 'Look, the bottom line is I'm only moderately interested in the Hotel New Japan. I'm interested in the Empire State Building. I can't go any further on this deal without an understanding on the Empire State Building.'"

Trump left Tokyo without a deal. But he kept in touch via Kiiko about the Empire State Building. Then, even as talks on Trump Tower Tokyo continued that fall, the unthinkable happened. On November 26 a Japanese high court, finally ruling on Yokoi's appeal, ordered him to serve three years in prison. Upon hearing the news, Yokoi, who suffers from high blood pressure, collapsed and was rushed to the hospital. He remained there until doctors cleared him to begin serving his sentence in May 1994.

By that time, it appears, a serious communications gap had arisen between Kiiko and her father's aides. "Just before Yokoi-san was sent to prison, he was in St. Luke's Hospital in Tokyo, and I was at his bedside," says Hishida. "So was Kiiko. On that occasion, Yokoi said to Kiiko, as to the overseas properties, talk to Hishida and get instructions from him. I was there. I heard the words. However, the day after Yokoi was sent to prison, Kiiko left Japan. She flew off. Since then I've been trying to get in touch with her, and she never replies!"

At this point, with Yokoi moldering in the drab Hachioji Medical Prison and Kiiko and Renoir secluded at their Juniper Hill estate, something went terribly wrong. On July 7, *The Wall Street Journal* carried news that Trump had acquired a half-interest in the Empire State Building; in a subsequent article it identified the building's owners for the first time as Renoir and Kiiko—not Yokoi. In Tokyo, Hishida took a call from a friend in the Bank of Japan's New York office, who sent him the article. Hishida says he was astonished.

"We never knew! We knew nothing!" Hishida tells me in machine-gun Japanese, gesturing excitedly. "I have asked Yokoi-san many times, and he confirmed that he never gave instructions to

do this with Trump. Never! Nothing!" But if the Trump deal stunned Yokoi, news that Renoir and Kiiko were the skyscraper's legal owners apparently sent him over the edge. As his American attorney, Steven Rosen, acknowledges, "Yokoi went nuts."

Had the Empire State Building been stolen—again? The tangled roots of the dispute appear to date to the family's official purchase of the skyscraper in 1993. The building was actually acquired by an American trust that, via a series of Netherlands Antilles shell companies, was controlled by a trust on the Isle of Man. But apparently unbeknownst to Yokoi, who has never visited the U.S., he wasn't listed as the principal beneficiary of the Isle of Man trust. Kiiko, whose New York attorneys drew up the papers, was. "It was [Yokoi] that sent the money, and naturally Yokoi believed the [building] was registered under his name," says Hishida. "Since we began using her as an agent, we have often asked Kiiko to send us a financial [ownership] statement, but she never did."

Kiiko and Renoir, through their attorneys, strongly deny they stole the Empire State Building or anything else. "It is not fathomable that [Kiiko], someone who is not financially sophisticated, would attempt to steal the Empire State Building," Kiiko's attorney Henry Bubel says dryly. Kiiko, who insists all her actions were authorized by her father, has a simple explanation for how she came to own the world's most famous skyscraper. As Trump puts it, "It was a gift."

Rather than confront Kiiko, Yokoi brought in Steven Rosen, who in turn hired the vaunted detective firm of Kroll Associates to investigate Kiiko and Renoir. Together they unearthed corporate records that showed the pair not only controlled the Empire State Building but had taken title to several of the European castles as well. Apparently without giving any indication of their mounting alarm, Hishida telephoned Kiiko and requested a copy of the deal with Trump. He never got one.

The inevitable showdown between father and daughter, such as it was, didn't take place until October 1994, when Bubel visited Tokyo. At an October 19 meeting, Hishida politely asked for a copy of Kiiko's agreement with Trump; Bubel said he would phone Kiiko for permission to mail him one. The atmosphere grew tense the next day when, after an unrelated discussion, Hishida again asked for a copy of Kiiko's deal. "As soon as [some others] left the room, they turned the discussion back to the Empire State Building, and I said, 'Well, I thought we discussed that [yesterday],'" says Bubel. "There was an independent banker in the room who had no reason to know what was going on. I didn't feel it was proper to be having discussions about the Empire State Building in front of the banker. I said, 'I think we're being rude. We should continue this at another time.' There was no chance to do that. I left Tokyo the next day."

Yokoi's people depict Bubel as even more evasive. "Bubel got very stiff," says Steven Rosen, "and said something like 'There's no further purpose to this meeting.' Yokoi's people felt put off. [But] they knew now they were not the [owners]. They knew Bubel was not acting for them."

Ten days later Yokoi sued, leaving no one more flabbergasted than Trump. Yokoi's suit directly challenges the validity of his deal with Kiiko. Both Yokoi and the Helmsleys, in fact, say Trump almost certainly doesn't own half the building. Rather, he probably owns an interest in the financial "upside" he can create by ousting the Helmsleys from their lease—which would explain how he bought a stake, as he put it, without paying a penny. "I'd rather not comment on that," Trump tells me. "But the ultimate answer is that I own 50 percent of the building. It's a complicated formula. A case could be made I actually own 50 percent. It's just a very complicated formula."

Trump insists he is puzzled by Yokoi's suit. "My impression, strongly, was that [Kiiko] owned the building, that it was a gift from the father," he says. "Forty million, to Yokoi, it's like giving her a trinket. He bought this like you'd buy a bracelet for your wife." Even if he didn't, Trump says, the notion that Yokoi remained ignorant of months of talks between Kiiko and the Trump Organization is inconceivable. Says Trump, "He must have known."

If so, why would Yokoi be suing?

Maybe, Trump speculates, advancing a theory favored by Kiiko's attorneys, Yokoi's other children grew jealous when they discovered in the newspapers that their father had given Kiiko such an expensive gift. "All of a sudden the brothers and sisters read that Kiiko owns the Empire State Building," Trump suggests, "and they go rat shit." Maybe her brothers, Trump goes on, who help run the company in Yokoi's absence, sued without his knowledge.

"When I saw him, he was 81, and he looked good, but he was a legitimate 81," says Trump. "But now, don't forget, time has passed, and tough time, in a jail, not in one of his villas. I would imagine he's not in great shape, both mentally and physically."

"No!" Hishida fairly shouts when I raise this theory. "Yokoi-san has been very distressed, saying his own daughter betrayed him! You can imagine how upset he is." Twice, Hishida volunteers, Kiiko has tried to visit her father in prison; both times he refused to see her. (Kiiko says she never tried.) Three years ago Yokoi formally recognized Kiiko as his daughter. "Now," says Hishida, "he wants to cancel it."

Steven Rosen, who first visited Yokoi in prison in January, says his client knows exactly what he's doing. "He spoke vigorously," says Rosen, who talked with Yokoi through holes in a Plexiglas window as a guard looked on, taking notes. "He believes Kiiko has done something criminal. He wants criminal charges pressed."

To avert that, and to clear the primary obstacle to Trump's assault on the Helmsleys, settlement talks among attorneys for Yokoi, Kiiko, and Trump began in February. Bubel, claiming Kiiko's actions were all authorized by her father, insists Yokoi is a beneficiary of the Isle of Man trust. But Rosen says Yokoi is at best "a discretionary beneficiary," capable of receiving income only if Kiiko allows. "We're still trying to get to the bottom of this," Rosen told me in mid-March.

No matter what happens, the case carries real risk for Trump. While he has little or no money on the line, the Helmsleys will argue that he is doing business with a purported crime figure—which could jeopardize Trump's all-important New Jersey casino licenses.

But as lawyers for Trump and the Helmsleys gird for battle and tabloid reporters crawl through the Empire State Building interviewing tenants, 7,000 miles away in a Japanese prison only one thing matters to Hideki Yokoi. "All we want is our building back," says Hishida. "What's best for Kiiko is she has to be courageous enough to come and speak to her father. Yokoi says if she comes back and says, 'Everything is back to you, Father,' he can rethink their relationship. But first she has to put everything back to the way it was before."

He pauses. "You know Mr. Trump, yes? Give him some advice. Tell him not to go too deeply into business with Kiiko. His reputation will be worse than her father's when she gets through with him." ☐

Herald International Tribune

June 2, 1995
page 11

MITCHELL
EXHIBIT

Ex-Honda Executives Convicted in Scam

The Associated Press

CONCORD, New Hampshire — Two former executives of American Honda Motor Co. accused of accepting kickbacks in a nationwide scam were convicted Thursday on all charges. Prosecutors said it was the largest commercial bribery case ever.

Dennis Josleyn, once the sales manager of West Coast Honda, and John Billmyer, former senior vice president, were convicted in U.S. District Court of taking bribes from dealers in return for preferential treatment in getting sought-after cars and dealerships, mostly in the booming 1980s.

The bribery and kickbacks in more than 30 states spanned a decade and peaked when Hondas and Acuras were in hot demand and short supply. At times, cars were sold for thousands of dollars more than the sticker price.

Both men were convicted of conspiracy. Mr. Josleyn, 48, faces up to 30 years in prison. Mr. Billmyer, 65, faces up to five years in prison.

Mr. Josleyn contended that Honda knew of and condoned the kickbacks, but the company denied it. He also was convicted of racketeering and mail fraud for skimming money from sales training and advertising programs. His lawyer said he would appeal.

Mr. Josleyn, Mr. Billmyer and other executives were accused of accepting $15 million in watches, fur coats, furniture, suits and college tuition from car dealers between 1979 and 1992.

Sixteen former Honda and Acura executives, two former dealers, an advertiser and a lawyer had pleaded guilty earlier to charges that included racketeering, perjury and mail fraud.

Two others have pleaded not guilty and are awaiting trial.

Prosecutors said that American Honda, based in Torrance, California, was the principal victim in the case because it now faces millions of dollars in lawsuits from dealers who did not receive preferential treatment.

American Honda said the convictions "close the book on a painful and difficult period in our history." Honda said it has "absolute confidence and trust in the integrity of our thousands of loyal and honest dealers and employees."

会資料)

サイパ リゾート２次開発について

閣調那室に!た
RLZ 1989

8/1/89

イパン島については、複合的なリゾート開発を目指しJALグループとして、１９８３年土地を購入し、今日までホテルを中心とする開発を行ってきた。
８８年４月にオープンしたホテルニッコーサイパン（HNS）は、サイパンにおける初格的リゾートホテルとして評価され、開業初年度にして客室稼動率７３%、ルーム単価０（島内平均 66%、$66 ）を達成し順調に推移している。
強い海外旅行需要、特に好調なリゾート需要を背景として、サイパン島における開発はテル周辺を含め急速に進んでおり、３～５年後には現在のサイパン島のホテル室総数を回る約２０００室の宿泊施設が誕生する予定である。
これらの開発ブームにより、周辺地価の高騰は著しく、当社グループ所有地も現在極めて評価額を有している。
イパン開発については、HNS設立に際し１１万㎡の土地を取得し、内２次開発用とし７万㎡を未活用地として残しているが、今般当該未活用地の事業化を中心にサイパン２次発を推進致したく、以下につき決裁を賜りたい。

1. ２次開発方針（なお実施案については８９年度中に別途仰裁することといたしたい。）
2. ２次開発に伴う土地追加取得について
3. 上記を実施するための事業主体としてHNS１００%出資現地法人の買収及び増資

次開発方針

の如くホテル事業は周辺の土地に付加価値を与えるものであり、周辺を活用した採算性い事業こそが複合開発の目的であり、以下を基本的な考え方とする。

テル事業は投資の回収に長期間要するが、２次開発は可能な限り短期回収かつ採算性の高事業とする。
テル隣接地は価値の高い極めて貴重な土地であり、売却による利益確保も可能だが、土地り少ないこともあり、永続的な収益確保を図るべきである。
地全体の付加価値を高められる事業とする。

記に基づき、以下を２次開発案と致したい。

山側～ショッピングセンター（リテイルスペース賃貸業）

海側～コンドミニアム（不動産分譲事業およびリースバック方式によるホテル運営事業）

ョッピングセンター
述の通りHNS周辺は宿泊施設の開発計画が目白押しであり、数年後には当該地区は島内最もツーリスト人口の多い地域になると思われる。また、島内には一定水準の品質を確保たショッピング施設が皆無でありショッピングセンターのニーズは、ツーリスト及びテナト側からも強い。

②コンドミニアム
HNSの客室稼動率は高く、今後の需要増を見込めば、数年後には増室が必要であ
宿泊事業の採算性等を考慮すれば、単なる増室は得策とは思われない。
コンドミニアム分譲により分譲益を確保した上で、オーナーから運営を受託し
して運営する方式により、短期投資回収および継続的な運用益の確保を図りたい。

2. ２次開発に伴う土地追加取得について（添付資料参照）
叙上の２次開発計画を推進するため、以下の土地を追加取得することと致したい。
対象地は２次開発ショッピングセンター計画地に隣接しており、同事業を適正規模
するためには、当該土地を取得することが必要である。
特に対象地Aは、JALグループの所有する土地の中心に位置しているためグルー
の所有となった場合、今後の開発に支障をきたす恐れがある。

①対象地A（面積４２１６㎡）
当該地は所有者が現地人であり、従来から取得努力を続けてきたが、最近長期リー
（５５年契約 一括前払い）であれば契約に応じる旨、所有者の意向が確認された。
②対象地B（面積５９８８㎡）
所有者は米人が実質的に所有する現地法人で、現時点では＄２～３/m² 月でのリー
オファーがある。
対象地Aについては、第三者によるリース契約交渉が＄２５０万で進んでいるとの情
が確認されているため、当方としても早急にほぼ同等の条件にて交渉を開始すること
したい。対象地Bについても、Aと同等一括前払い長期契約が望ましいので、必要な
収集が完了次第、別途所定の仰裁を行うこととしたい。

3. HNS１００%出資現地法人の買収及び増資
①叙上の事業は高い採算性が期待され、また事業主体は資産を保有することとなるた
将来の当該地区における再投資の可能性等を考慮し、２次開発を推進する事業会社は
JAL１００%出資の現地法人とし、当該地区の戦略会社として位置付ける必要があ
このため、事業主体としてHNS１００%出資の現地法人※TROPICAL PLAZAをJAL
買収することとする。
※ 設立　　1989. 6. 12　資本金 1,000ドル（HNS１００%）
　事業目的　不動産開発及びこれに付随するすべての事業

②買収後、対象地Aの長期リース権取得用の＄２５０万をJALより増資すること
（尚、長期リース権取得用の予算が＄２５０万を越える場合は別途改めて仰裁する。

MITCHELL
EXHIBIT

4,216㎡
5,988

Translation of a Two-Page Document
Provided by Theodore R. Mitchell, Esq.

Translator's notes appear either in [ ] or in footnotes.

[Translation from the Japanese original into English.]

(Data for Executive Committee[1])

CLASSIFIED. [stamped with a circle around]

WITH RESPECT TO THE SECOND PHASE OF THE SAIPAN DEVELOPMENT. [title]

General Headquarters
for Allied [or, Affiliated] Businesses
RLX/August 1989
8/1/89 [handwritten]

As to the Island of Saipan, targeting a compound resort development, as the JAL Group [we] started purchasing land in 1983 and have engaged up to today in the development centering a hotel.

Hotel Nikko Saipan (HNS) which was opened in April 1988, was evaluated as the first full-scale resort hotel on Saipan and attained in its first year of business the guestroom occupancy rate of 73% and the [average] room charge rate of $80 (islandwide average: 66%, $66), and has been smoothly progressing.

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1 It may mean "Data for Executive Committee Meeting." A Japanese top management usually consists of: Chairman of the Board of Directors, one or more Vice-Chairmen, President, one or more Vice-Presidents, one or more Senior Executive Directors, one or more Executive Directors, and Directors. The Executive Committee herein denotes a committee made of Executive Directors and above in the corporate hierachy.

With the deep-rooted demand for overseas travels and a particularly favorable demand for resorts as its background, the development on Saipan, including the vicinity of the Hotel, has rapidly been made, and it is scheduled that approximately 2,000 rooms for accommodation, which is more than the present total hotel rooms in number, will be born three to five years from now.

Because of the development boom of these [sic], the increase in land prices in the vicinity is conspicuous [striking, remarkable] and the land owned by our company group has an extremely good appraised value.

As to the Saipan development, [we] acquired 170,000 square meters of land at the time of the establishment of HNS and still have 70,000 square meters of undeveloped land [reserved] for the second phase of the development; [our office hereby] request for an executive approval[2] as to the below in order to proceed with the Saipan Development Second Phase centering the business development of the undeveloped land.

1. Policy for the Second Phase Development. (As to the Working Plan, [we'd like to] submit it on a seperate basis for an executive approval within the fiscal year 1989.

2. Regarding the additional acquisition of land for the Second Phase Development.

3. Purchase of and capital increase of the local corporation which is 100% capitalized by HNS [to use it] as the undertaking principal to execute the above stated.

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[2] The original word is "kessai," which is an indispensable part of the Japanese corporate practice of non-small-sized firms where a section/person in charge of a certain business will foward a package of data to the decision-makers (usually at the top management level) requesting for an approval of the business plan contained therein.

1. Policy for the Second Phase Development.

As stated above, the hotel business is to give additional values to the land in its vicinity and the purpose of the compound development must be the businesses with high profitability making the most of the vicinity, and [therefore] the below shall be the basic concept.

- While the hotel business requires a long term in recovering the investment, the Second Phase Development shall be [for] businesses with a short term recovery and a high profitability as much as possible.

- The land adjacent to the Hotel is high in value and an extremely valuable land; securing a profit by selling [the land] is possible, but, in view also of the scarcity of the land left behind, it shall be to attempt to secure permanent profits.

- The business shall be to increase the added value of the entire site.

Based on the above-said, [we'd like] the below to be the Second Phase Development plan.

(1) The mountain side - Shopping Center (Rental business of retail spaces)

(2) The ocean side - Condominium (Real estate lot sales business and hotel operation business under a leaseback system)

(1) Shopping Center.

As stated above, around HNS stand close side by side development plans for accommodation facilities, and it is expected that the subject area in a few years will be the most tourist populated area on the island. Also, totally absent on the island is a shopping facility secured with a quality of a certain degree, and the need for a shopping center is strong from the tourist side as well as from the tenant side.

(2) Condominium.

The room occupancy rate at HNS is high and, taking into consideration the increase in demand, there will be a necessity for additional rooms in a few years; however, a mere addition of rooms is not deemed the best policy if considered will be the profitability, etc. of accommodation business.

By selling condonium units and upon securing sales profits, [we] will go into an operation contract with the owners, and under the system [where we'll be] operating [it] as a hotel [we] would like to attempt a short term investment recovery and securing of continuous operating profits.

2. Regarding the additional acquisition of land for the Second Phase Development. (See attached material.)

To promote the afore-said Second Phase Development plan, the below land shall be additionally acquired.

The subject land is abutting the Second Phase Development Shopping Center plan site, and it is necessary to acquire this land in order to execute the said business on an appropriate scale. Because Subject Site A in particular is situated at the center of the land owned by the JAL Group, if it will be owned by a non-Group [member] there is a fear of [it becoming] a hindrance to the development to come.

(1) Subject Site A (4,216 square meters in area)

This subject land is owned by a local person, and [we have] been making continuous efforts in acquiring [it]; the owner's intent recently was confirmed that [the owner] would agree to go into a contract if it is a long term lease (55-year contract; all paid in advance).

(2) Subject Site B (5,988 square meters in area)

The owner is a local corporation actually[3] owned by American[s], and there is at the present time a lease offer of $2~3 per square meter per month.

As to Subject Site A, because confirmed is that a lease contract negotiation at $2.5 million is in progress with a third party, our side would like to soon start a negotiation on approximately the same conditions. As to Sujbect Site B also, because desired is a long term contract with all paid in advance just like Subject Site A, [we'd] like to request on a seperate basis for an executive approval pursuant to the regulations upon completion of the collection of necessary information.

3. Purchase of and capital increase of the local corporation which is 100% capitalized by HNS.

(1) Because the afore-said business is expected of a high profitability and the undertaking principal is to hold assets, and in consideration of the possibility, etc. of re-investments in the subject area in the future, there is a necessity that the business corporation to promote the Second Phase Development shall be a local corporation 100% capitalized by JAL and that [the corporation] be designated as the strategical company in the subject area. For this, JAL shall purchase Tropical Plaza, a local corporation* which is 100% capitalized by HNS, as the undertaking principal.

* Established on July 12, 1989; Capitalization $1,000 (HNS 100%)
Business purpoes Real estate development and all businesses related thereto.

(2) After the purchase, JAL shall increase the capital in the amount of $2.5 million for the acquisition of the long term leasehold of

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[3] "Actually" or "de facto" as opposed to "nominally" or "being in name or form only."

Subject Site A. (If the budget for the acquisition of the long term leasehold exceeds $2.5 million, [we] shall request on a seperate basis for an executive approval.)

Nothing follows.

[Second Page]

Attached Material

[in a rectangle]
Leaseback System Condominium
(Second Phase Development plan)

Hotel Nikko (313 rooms)
Saipan
(Developed)

Rental houses
(for JAL, hotel staff)
Opened for business

[(A)]

[(B)]
[in a rectangle]
Shopping Center
(Second Phase Development plan)

Pacific Daily News
Friday, Sept. 10, 1993
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Agana, Guam

Suit seeks new route on Article 12 issue

Potowatomie case looks at company land ownership

By DAN PHILLIPS
Daily News Staff

With efforts at resolving problems related to lawsuits involving Article 12 of the Commonwealth Constitution stalled in the Legislature, another lawsuit has been filed in an attempt to resolve land transactions involving corporations.

Potowatomie, Inc., a corporation owned by Saipan-based lawyer Bob O'Connor, filed suit in Superior Court on Aug. 26 to obtain a court ruling on the legal status of land involving in the Coral Island Condominiums on Mount Tapotchau, Saipan.

The suit seeks an order declaring Jose Terlaje legal owner of the land and declaring valid a lease assignment from WDI Japan Co., Ltd. to Potowatomie.

Named as defendants are Deborah J. High, Charles D. Jordan, Stephen Fisher, Jose C. Terlaje and Jose C. Terlaje, Jr., Regina C. Terlaje, WDI Saipan Co. and WDI Japan Co., the commonwealth government and the Marianas Public Land Corp.

Potentially involved in the suit, filed by Michael W. Dotts of O'Connor's law office, is section 6 of Article 12, which deals with land transactions involving corporations.

Dotts said the government and MPLC are named as defendants to "ensure that no forfeiture to the government has occurred under Article 12, section 6."

Article 12 limits ownership of commonwealth land to people of Northern Marianas descent.

The suit was filed because Potowatomie "can't trust the title and can't get title insurance on major issues affecting the title — namely Article 12," Dotts said.

The ownership of land by corporations is the subject of several lawsuits alleging violations of Article 12, but there have been no judicial rulings on the key issues involving corporations.

NORTHERN MARIANAS

Title: Article 12 continues to spawn litigation

Continued from Page 1

Three taxpayer-based lawsuits were filed at the end of last year, but they were dismissed in March when MPLC's legal counsel agreed to take action to address the same issues raised by the taxpayers.

Since the dismissals, the only activity in the three cases, which involve the Pacific Islands Club, the DFS store in Garapan and an undeveloped piece of San Roque land, has come in the form of efforts by lawyer Ted Mitchell to prove his theory that Saipan multi-millionaire businessman and special judge Larry L. Hillblom was behind the three cases.

Dotts, who represented Mario Taitano in one of those cases, said the cases could be re-filed because MPLC has not followed through on its promise to take action.

Mitchell, who represents several people who are trying to regain land they previously sold, also represents the Marianas Public Land Trust.

It is on behalf of MPLT that he has pursued his Hillblom conspiracy theory, which has led to nothing more than another theory — that seven lawyers conspired to pursue the three cases and that O'Connor supplied the financing. Mitchell claims to have proof of the new findings, which are being disputed.

What happens to the land?

The three taxpayer-based cases alleged that whenever a corporation violates Article 12, the land in question must be forfeited to the commonwealth government.

Mitchell, however, contended that what happens to the land depends on whether the corporation was ever qualified to own land in the first place.

Section 6 of Article 12 states: "Whenever a corporation ceases to be qualified under section 5, a permanent or long-term interest in land in the commonwealth acquired by the corporation . . . shall be immediately forfeited without right of redemption to the government."

Section 5 of Article 12 requires that any corporation, in order to legally own land in the commonwealth, must be owned 100 percent by people of Northern Marianas descent. The requirement was 51 percent prior to a 1985 constitutional amendment.

Mitchell's theory in his Article 12 cases involving corporations is that the corporations that allegedly violated Article 12 were nothing more than shams that had the names of people of Northern Marianas descent on paper to act as fronts for people not of Northern Marianas descent.

He argues that if a corporation was a sham and never qualified to own commonwealth land, it could never cease to be qualified.

The Potowatomie case, at least for now, does not involve Mitchell at all.

Guerrero bides time on Article 12 bill

By Rafael H. Arroyo

GOVERNOR Larry I. Guerrero has withheld action on an Article 12 legislation from the House of Representatives until he fully digests the mechanics of a similar but more comprehensive bill from the Senate on the same issue.

House Bill 8-295, which seeks to put a cap on fees paid attorneys litigating Article 12 cases, has remained on the desk of the chief executive since the House transmitted it last August 17th.

Guerrero said he is still awaiting word about the fate of Senate Bill 8-124 before making a decision on the pending measure, essentially because both bills address similar problems.

"We're still getting input from our legal advisers on the pending measure. We'll compare this with the Senate version and see which will best accommodate the concerns of our people," said Governor Guerrero in an interview with reporters yesterday.

Guerrero's apparent wait-and-see attitude on H.B. 8-295 is hinged on whether it would be better to just enact an omnibus legislation on Article 12 bill like the Senate measure, considering that it addresses the issue of attorneys fees as tackled in the House legislation.

"I need to digest both bills more. I am more concerned about the constitutionality of their provisions and has been discussing them with my legal advisers," said the governor.

H.B. 8-295 limits Article 12 lawyers to a maximum compensation of $700 per hour. It also prohibits contingency arrangements, where attorneys fees would be based on a percentage of the value of the land being recovered.

The bill was authored by Rep. Stanley T. Torres, with major amendments put in by Rep. Jesus P. Mafnas.

On the other hand, S.B. 8-124 addresses four controversial issues concerned with the interpretation of Article 12 issues.

Aside from also placing a cap on attorneys fees as in H.B. 8-295, it shortens the period within which Article 12 claims may be brought up by the original landowner versus the purchaser of the real estate property.

Aside from that, it does away with the resulting trust theory as applied by CNMI courts on Article 12 cases and provides restitution for those who lose their investments on a property that is reclaimed through Article 12.

Article 12 of the Constitution prohibits persons not of Northern Marianas descent from owning land in the Commonwealth. This means the most foreign developers could hope for in terms of real estate interest is 55 years maximum.

Such a restriction had developers trying various ways on gaining long term land interest, including the use of local dummies who pose as land buyers for them.

Because the Commonwealth Recorder's Office has no means to ascertain the source of the money used in any land transaction, the valid transactions could not be distinguished from those that violate the land alienation provision.

Such uncertainty has projected an image from investors that in the Commonwealth, a good faith land deal may not turn out to be a good faith land deal after all.

To correct such uncertainty, S.B. 8-124 was introduced.

The bill has passed the Senate after a series of public hearings and was quickly transmitted to the House where it is now pending.

Pacific Star 10/11/93

Guerrero, Tenorio support SB 8-124

BOTH candidates for governor and their running mates have formally gone on record in support of Senate Bill 8-124, according to SMART, the coalition of local citizens formed to solve the Article 12 crisis.

On Sept. 24, Governor Lorenzo I. De Leon Guerrero and Lt. Gov. Benjamin T. Manglona added their signatures to those of thousands of local residents on a petition calling on lawmakers to "act without delay to solve the Article 12 crisis and stop the lawsuits."

The governor earlier told a SMART (Saipanese Mobilized on ARTicle 12) delegation that he strongly supports SB 8-124 and was asking Speaker Thomas P. Villagomez to move the bill through the House without delay.

Meanwhile, Democratic candidate for governor Froilan Tenorio said on last Wednesday's Jon Anderson show on Marianas CableVision that he and running mate Jesse Borja both "support the intent" of SB 8-12.

The bill limits the period during which land claims under Article 12 of the Constitution may be filed. It also allows developers to recover their investment.

Lucy Nielsen, a founding member of SMART, said the organization "is very pleased that both gubernatorial tickets have recognized that this isn't about politics -- it's about basic fairness."

"The people are united behind SB 8-124 as a solution to the Article 12 crisis -- but time is running out," Nielsen said.

Court nixes bid to uncover true plaintiff in land case

IE SUPERIOR Court recently ›pressed a subpoena issued by Marianas Public Land Trust Bank of Saipan requesting all nk records of businessman ry Hillblom, attorneys Michael tts and Robert O'Connor and the San Roque Beach Development Co. in connection with a "fraud on the court" claim made by MPLT in the Ayuyu v. Commonwealth Investment Co.

In a decision and order penned by Judge Marty Taylor, the trial court ordered that the discovery expedition initiated by MPLT on the true plaintiff in the Ayuyu vs. CIC case be stopped.

Furthermore, it went in favor of a motion filed by SRBD for a protective order against the same subpoena on the grounds that the discovery being sought is "improper, irrelevant and intrudes on SRBD's private rights."

MPLT initiated a deposition on who the real plaintiff in the Ayuyu case after it had reason to believe Ayuyu and his lawyer in the case, James Hollman, committed "fraud on the court."

This was because there was suspicion on MPLT's part that Hillblom financed the suit without himself acting as plaintiff in the case.

But assuming that Hillblom did finance the lawsuit without himself acting as plaintiff, the only conceivable harm done to MPLT would be its inability to seek rule 11 sanctions against him personally because he was neither attorney nor named plaintiff.

And since MPLT does not seek relief from any judgment, but rather money damages for alleged fraud in not disclosing the real plaintiff in the case, it cannot invoke Rule 11 sanctions on any of the parties of the case, nor on Hillblom.

"Sanctioning an attorney's firm or a corporate party's president is still a far cry from sanctioning someone who is not officially affiliated in any way with either the attorney or the party," the decision read.

It further said that since Hillblom cannot be a potential target for Rule 11 sanctions in this case, discovery aimed at proving his identity as the "real plaintiff" cannot be proper.

The subpoena could not also prosper since MPLT cited no purpose for the discovery sought beyond the "real plaintiff" issue.

The court, in defending its decision cited a similar precedent whereby "it appears that defendants are attempting to utilize the discovery rules as a "fishing expedition" to find some basis for their claim.

"Given the court's determination that MPLT's motion for sanctions does not support the discovery sought in the subpoena at issues, there is no need to determine whether MPLT is a government authority, for the purposes of 12 U.S.C. § 3401 et seq. Likewise the court need not determine here whether the constitutional right to privacy attaches to a corporation, and if so, how that right should be balanced against the need for discovery in a civil suit," the court decision read.

Petition to solve Art. 12 crisis continues to draw local signatures

Spn Tribune Sept 10, 1993

MORE than 1,5000 eligible CNMI voters have signed a petition to the Legislature demanding that it "act now!" to solve the Article 12 crisis before adjourning for re-election campaigning.

Organizers said these petition drive will continue to be collected until action is taken on presently pending legislation aimed at resolving the Article 12 crisis.

"We want our elected leader to know how strongly we feel that everything we care about - our culture, our economy, even our personal relationships with each other - is in danger because of the continuing Article 12 crisis," said Connie Coward, one of spokesperson for the effort.

The group calls itself "S.M.A.R.T," which stands for "Saipanese Mobilized on Article 12." Its petition reads:

"IT'S TIME TO ACT! Legislators must solve the Article 12 crisis. We, the undersigned, US citizens and residents of the CNMI, call upon our Legislature to act without delay to solve the Article 12 crisis and stop the lawsuits.

This crisis must be solved before our economy is ruined and more people lose their jobs. It must be solved before our international reputation as a secure place to do business, is destroyed. It must be solved before we lose faith in each other and in our word of honor.

We want our legislators to face this problem now and pass legislation before leaving Capitol Hill to campaign for re-election."

"The Legislature has come a long way in recognizing the problem, holding hearings and drafting legislation," said S.M.A.R.T spokesperson Coward. "But now, with very few days remaining in this legislative session, we want them to know that we expect them to pass the Article 12 bill now before them (SB 8-124) and get the Governor to sign it, before they start campaigning," she added.

Residents push for Article 12 action

By DAN PHILLIPS
Daily News Staff

Taking care of looming problems associated with lawsuits involving Article 12 of the Commonwealth Constitution must come before campaigning for the upcoming election, at least in the eyes of an activist group calling itself SMART.

SMART, short for Saipanese Mobilized on Article Twelve, is led by DFS Saipan Ltd., Ken and Connie Coward, and other people whose lives are being directly and indirectly affected by Article 12-related lawsuits.

Following a massive public education campaign backed by DFS, which included two video programs and a flyer designed to put the problems involved in the lawsuits into common language, the SMART group amassed more than 1,500 signatures on a petition that called for legislative action.

The latest form of campaigning on the Article 12 controversy has come in the form of a flyer mailed to most of the commonwealth's registered voters.

The flyer was published by a loose-knit, nameless coalition that includes Saipan lawyer Michael W. Dotts, who said the work has come on behalf of Bonita Vista Properties, Inc.

Connie Coward, who could lose the house she and her husband built on Capitol Hill due to an Article 12-related lawsuit, led the SMART drive that gathered the signatures in about a month's time.

The petition contained the statement, "We the undersigned, U.S. citizens and residents of the CNMI, call upon our Legislature to act without delay to solve the Article 12 crisis and stop the lawsuits."

"This crisis must be solved before our economy is ruined and more people lose their jobs. It must be solved before our international reputation for doing business is destroyed. It must be solved before we lose faith in each other and in our word of honor," the petition says.

A wide spectrum of people, from hotel developers to average homeowners, are being threatened by litigation alleging violations of Article 12, which limits ownership of commonwealth land to people of Northern Marianas descent.

Coward said she and her husband stand to lose their life savings if they lose their Capitol Hill house without being compensated.

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Residents: Petition shows impact on average people

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it won't be with nothing," she said.

The petition drives home the message to lawmakers that average people, not just corporations and developers, are being affected by the lawsuits, either directly or indirectly, Coward said.

She also said some elected leaders feel Senate Bill 8-124, which addresses at least four major issues involved in Article 12-related litigation, is politically sensitive.

"Maybe they think it is a sensitive issue, but I think more people are on our side. Just look at the results of the petition," Coward said.

She said the signatures were gathered in about a month, then turned into Marian Aldan-Pierce of DFS for verification. After that, however, many have asked if they could sign, Coward said.

Senate Bill 8-124 is now awaiting action in the House, which could meet in a session today.

The bill would limit the amount lawyers could charge in Article 12-related litigation, provide for compensation for people who lose their land in Article 12-based lawsuits, set a statute of limitations for lawsuits alleging Article 12 violations and clarify the application of the "resulting trust" legal doctrine.

House Speaker Thomas P. Villagomez had said the House was carefully reviewing the bill and waiting to see what Gov. Larry I. Guerrero would do with a House bill that addresses only the limitation on lawyers' charges.

That bill, which would allow lawyers to charge up to $700 an hour, instead of making contingency fee arrangements for a percentage of the land's value in case the lawyer wins, is now before the governor.

Guerrero, however, said that he would rather deal with the more comprehensive Senate bill, so that he doesn't have to duplicate his effort.

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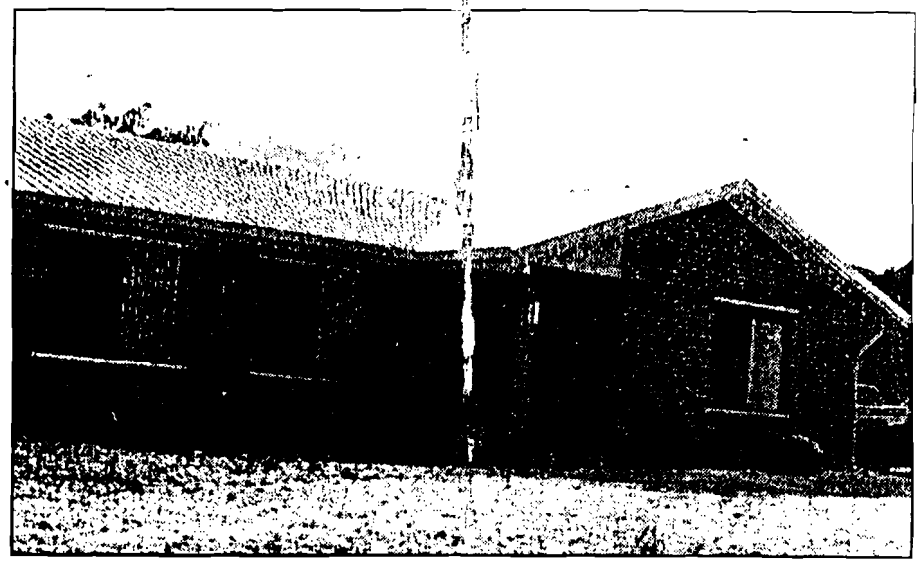
Guerrero has until next Friday to decide whether or not to sign the House bill.



Dan Phillips/Daily News Staff

Ken and Connie Coward's Capitol Hill house is being threatened by a lawsuit alleging violations of Article 12 of the Commonwealth Constitution.

The CNMI Senate answers your questions about the Article 12 crisis

THE FOLLOWING questions are answered by excerpts from the report of the Senate Committee on Resources, Development and Program[illegible] Report No. 8-63) on S.B. 8-124.

Q. Have the Article 12 decisions affected the title of our land?

A. *"The Commonwealth's land title system cannot now be considered reliable.* The documents filed at the Commonwealth's Recorder Office do not show who provided the money for the purchase of a parcel of land. Even if all the deeds, leases, mortgages, etc., required by law are present at the Recorder's Office, an examination of record title will not show whether or not land was purchased by a person of NMI descent using money from a person who was not of NMI descent. Thus, it is nearly impossible to determine if a seller or lessor possesses clear title of the parcel of land." (footnote omitted)

Q. Since we can no longer ensure potential buyers or lessees that we have clear title in our land, can't we just tell them to buy title insurance to protect themselves?

A. *"Since 1987, it has been impossible to purchase title insurance against Article XII suits.* Thus, investors are faced with the possibility of a total loss of whatever money they may invest in developing a piece of CNMI property."

Q. Has our inability to provide clear title because of these court cases affected the value of our property?

A. *"Land values in the CNMI have dropped by 20 to 50 percent over the last two years.* [Footnote #3] This is a conservative estimate. The Committee is aware of land parcels whose value has dropped by as much as 83 percent in the last two years... "

Q. Is this major drop in land prices due to the Article 12 cases or to the recession?

A. "It is clear that Article XII is not the sole reason for the slowdown in the NMI economy. *But it is equally clear that the Article 12 cases are a significant contributing factor.* Guam and Hawaii have also suffered from high Japanese interest rates and the general global recession, but neither has seen anything like the drop in land values that we have."

Q. Didn't the Court recognize that its Article 12 decisions would harm our economy?

A. *"The Court recognized that its decision might cause problems.* 'We are, however, concerned with the pssibility that a decision in favor of Mafnas may 'unleash chaos into the Northern Marianas land title system and economy'... [w]e note that our ruling might pose problems for land title researchers... [and] may create difficulties with respect to loans secured by real property, title to which may be constitutionally tainted.' "

Q. Is only the value of our land at stake?

A. "These economic problems are not the only reason we have for bringing this legislation forward. There are also fundamental issues of fairness and justice at stake. It is clear from testimony and other evidence that in at least some cases, *innocent persons who acted in good faith are now being threatened with the loss of their homes and their life savings because of Article XII suits. This is an intolerable situation"*

Q. If this is a sensitive issue, can't we just ignore it and hope it will go away?

A. "[I]t is abundantly clear from the public hearings that *the Article XII suits have had an extremely divisive effect on our island community.* Neighbors, friends, and even families have been split. Emotions run high on both sides."

Signers of the Senate Committee Report: Sen. Edward U. Maratita, Sen. Paul A. Manglona, Sen. David M. Ching, Sen. Juan S. Torres and Sen. Francisco M. Borja. Dated July 23, 1993.

Article 12 bill now law

By Rafael H. Arroyo

GOVERNOR Larry I. Guerrero yesterday signed into law a bill that would set limits and control the billing practices of attorneys prosecuting claims under Article 12 of the Constitution.

With a stroke of a pen, Guerrero enacted House Bill 8-295 into Public Law 8-29, two days before the statutory deadline for him to act on the measure expired.

"Uncertainties over land titles threaten the Commonwealth economy and create inequities for many landowners," said Guerrero as he announced the action he took on H.B. 8-295.

"Landowners, investors, real estate companies and others need solutions that are fair, legally sound and equitable to all parties. This law is a part of the solution to the land title question," added the chief executive.

Yesterday's signing contrasts an earlier pronouncement made by Guerrero that his action would wait until he fully digests the mechanics of a similar but more comprehensive bill from the Senate on the same issue.

Guerrero said he was awaiting word about the fate of Senate Bill 8-124 before making a decision on the pending measure, essentially because both bills address similar problems.

.H.B. 8-295 limits Article 12 lawyers to a maximum compensation of $700 per hour. It also prohibits contingency arrangements, where attorneys fees would be based on a percentage of the value of the land being recovered.

The bill was authored by Rep. Stanley T. Torres, with major amendments put in by Rep. Jesus P. Mafnas.

On the other hand, S.B. 8-124

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Vice Speaker Diego T. Benavente puts on a "S.M.A.R.T." pin in the presence of Marian Aldan-Pierce. Pierce led the group Saipanese Mobilized on Article Twelve in asking the House to pass a Senate bill addressing problems on Article 12.

9/13/93

Variety

Article 12. . .

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addresses four controversial issues concerned with the interpretation of Article 12 issues.

Aside from also placing a cap on attorneys fees as in H.B. 8-295, it shortens the period within which Article 12 claims may be brought up by the original landowner versus the purchaser of the real estate property.

Aside from that, it does away with the resulting trust theory as applied by CNMI courts on Article 12 cases and provides restitution for those who lose their investments on a property that is reclaimed through Article 12.

Article 12 of the Constitution prohibits persons not of Northern Marianas descent from owning land in the Commonwealth. This means the most foreign developers could hope for in terms of real estate interest is 55 years maximum.

Such a restriction had developers trying various ways on gaining long term land interest, including the use of local dummies who pose as land buyers for them.

Because the Commonwealth Recorder's Office has no means to ascertain the source of the money used in any land transaction, the valid transactions could not be distinguished from those that violate the land alienation provision.

Such uncertainty has projected an image from investors that in the Commonwealth, a good faith land deal may not turn out to be a good faith land deal after all.

The new [illegible] which seeks to put a cap on [illegible] agencys litigating Article 12 cases, has remained on the desk of the chief executive since the House transmitted it last August 17th.

Under Commonwealth statute, the chief executive has 40 days to either approve it or veto it, otherwise, it automatically becomes law. But since that deadline date falls on a Sunday, the preceding Friday September 24th was considered the last day for him to sign the measure.

Group ask House to pass Article 12 bill

By Rafael H. Arroyo

SOME ten members of the group called Saipanese Mobilized on Article Twelve (S.M.A.R.T.) yesterday trooped to the Legislature to lobby the House of Representatives into passing a Senate bill which they think could solve current problems with the land alienation provision of the CNMI Constitution.

The group, who sought audience with House Speaker Thomas . Villagomez and other House leaders, were led by Marian Aldan-Pierce, Lucy Nielsen, Ken Coward and Saipan lawyer Mike Dotts who all asked the House to act with dispatch on Senate Bill -124, a bill regarding the controversial Constitutional provision.

"We decided to come up here to seek support and find out the position of our lawmakers on Senate Bill 8-124. As you know time is of essence here. There is but a couple of months left in the Eighth Legislature's term of office and we're concerned about the fate of the bill," said Nielsen.

This is because as soon as the Eighth Legislature convenes for its sine die session, and the Ninth Legislature is convened, all bills pending at both houses are considered dead.

It will be up then for the members of the next Legislature to take up some of those pending bills for reintroduction in the ninth august body.

"This is something we do not want to happen. We do not want the bill to die a natural death because this means we have to start all over again," said Nielsen.

Aldan-Pierce, another member of the group, echoed Nielsen's fears, saying it is difficult to start the process of reeducating the people about the bill all over again.

"We have been pushing for measures to solve the problems on Article 12 for over a year. We do not want to start again and face another year of delays," said Aldan-Pierce in a separate interview.

Also, he said the passage of the Senate bill is needed to provide guidance for the Commonwealth judiciary in analyzing current litigation involving Article 12.

This, she said, is especially important in the light of the recent US Ninth Circuit Court decision in the Ferreira vs. Borja case which remanded the case back to the CNMI courts.

"That decision made it more important that the Legislature act on the bill, because of the need to have some guidelines for our courts to act within," said Aldan-Pierce.

S.B. 8-124 seeks to place a cap on attorneys fees on real property cases and calls for equitable compensation to parties adversely affected in land disputes involving Article 12.

It also provides for a shorter statute of limitation, that is a shorter period within which original landowners can file for a claim under Article 12.

Article 12 restricts ownership of land in the Commonwealth only to persons of Northern Marianas descent.

That is why some foreign developers have resorted to circumvention of such restriction through the use of local "dummies" who purchase land for their use.

Such a modus operandi has cast doubts on the validity of certain land transactions, especially since the Commonwealth's land title system has been lately labelled as unreliable, because any examination of record title will not show where purchase money for any land transaction came from.

Since a land purchased by a person of NMI descent could not be ascertained in terms of money source, it is nearly impossible to determine if a sellor or lessor possesses clear title of any land.

This uncertainty has led to investors having second thoughts on doing business here for fear that they may lose their investments due to Article 12.

This was the situation that Senate Bill 8-124 wanted to address.

Only recently about 1,000 US citizens residing here in the NMI have gathered themselves into a group and circulated a petition asking that steps be taken to resolve Article 12 problems.

Calling themselves S.M.A.R.T., the group is said to have gathered approximately 1,700 signatures, according to Aldan-Pierce.

"Its time to act. we call upon our Legislature to act without delay to solve the Article 12 crisis and stop the lawsuits, before the economy is ruined and more people lose their jobs," the group was heard as having said.

Rep. Heinz S. Hofschneider answer queries from S.M.A.R.T signatories who trooped to the Legislature yesterday.

Court nixes bid to uncover true plaintiff in land case

E SUPERIOR Court recently pressed a subpoena issued by Marianas Public Land Trust ank of Saipan requesting all records of businessman y Hilblom, attorneys Michael s and Robert O'Connor and the San Roque Beach Development Co. in connection with a "fraud on the court" claim made by MPLT in the Ayuyu v. Commonwealth Investment Co.

In a decision and order penned by Judge Marty Taylor, the trial court ordered that the discovery expedition initiated by MPLT on the true plaintiff in the Ayuyu vs. CIC case be stopped.

Furthermore, it went in favor of a motion filed by SRBD for a protective order against the same subpoena on the grounds that the discovery being sought is "improper, irrelevant and intrudes on SRBD's private rights."

MPLT initiated a deposition on who the real plaintiff in the Ayuyu case after it had reason to believe Ayuyu and his lawyer in the case, James Hollman, committed "fraud on the court."

This was because there was suspicion on MPLT's part that Hillblom financed the suit without himself acting as plaintiff in the case.

But assuming that Hillblom did finance the lawsuit without himself acting as plaintiff, the only conceivable harm done to MPLT would be its inability to seek rule 11 sanctions against him personally because he was neither attorney nor named plaintiff.

And since MPLT does not seek relief from any judgment, but rather money damages for alleged fraud in not disclosing the real plaintiff in the case, it cannot invoke Rule 11 sanctions on any of the parties of the case, nor on Hillblom.

"Sanctioning an attorney's firm or a corporate party's president is still a far cry from sanctioning someone who is not officially affiliated in any way with either the attorney or the party," the decision read.

It further said that since Hillblom cannot be a potential target for Rule 11 sanctions in this case, discovery aimed at proving his identity as the "real plaintiff" cannot be proper.

The subpoena could not also prosper since MPLT cited no purpose for the discovery sought beyond the "real plaintiff" issue.

The court, in defending its decision cited a similar precedent whereby "it appears that defendants are attempting to utilize the discovery rules as a "fishing expedition" to find some basis for their claim.

"Given the court's determination that MPLT's motion for sanctions does not support the discovery sought in the subpoena at issues, there is no need to determine whether MPLT is a government authority, for the purposes of 12 U.S.C. § 3401 et seq. Likewise the court need not determine here whether the constitutional right to privacy attaches to a corporation, and if so, how that right should be balanced against the need for discovery in a civil suit," the court decision read.

Manglona remembers negotiations

By DAN PHILLIPS
Daily News Staff

Where did Article 12 of the Commonwealth Constitution come from, and why is it there?

Lt. Gov. Benjamin T. Manglona, one of the negotiators of the Commonwealth Covenant and a delegate to the first Constitutional Convention, explained how Article 12 came into being.

During the negotiations that led to the Covenant, "there was a fear on the part of the United States delegation that if we ever permitted land alienation (unrestricted land ownership), our local people would definitely sell our land to outsiders, especially to our neighbors like Japan and Korea," Manglona said.

"There was tremendous discussion about how to protect against that and both sides came to the conclusion that it was in the best interests of the North-

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Negotiate: U.S. proposed Article 12 terms

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ern Marianas people to preserve their precious land," he said.

Manglona said that some of the members of the Northern Marianas delegations felt that land ownership should not be restricted, but the negotiations ended with an agreement that land ownership would be restricted to people of Northern Marianas descent until at least 25 years after the termination of the United Nations trusteeship agreement as it applied to the Islands.

"After the 25-year period, then it is up to the people and the leaders to decide," he said.

Although there were concerns that the restrictions, which are contained in section 805 of the Covenant, would be considered unconstitutional under the U.S. Constitution, Herman Marcus of the U.S. State Department assured the Northern Marianas that it was defensible, Manglona said.

'Our people were desperate for cash and would have quickly sold their land for some money. The negotiators did not want the locals to lose control of their islands.'
— LT. GOV. BENJAMIN MANGLONA

Section 805 was included because the negotiators "felt we needed time to educate our citizens and to protect them, so they could become more knowledgeable about economic conditions and the market for land, and eventually represent themselves in land transactions," he said.

The bottom line, he said, is that in the early days of the commonwealth, "our people were desperate for cash and would have quickly sold their land for some money. The negotiators did not want the locals to lose control of their islands."

Section 805 itself states that it was created "in view of the importance of the ownership of land for the culture and traditions of the people of the Northern Mariana Islands, and in order to protect them against exploitation and to protect their economic advancement and self-sufficiency."

Section 805 requires the commonwealth to, until 25 years after the termination of the trusteeship, "regulate the alienation of permanent and long-term interests in real property so as to restrict the acquisition of such interests to persons of Northern Marianas descent."

Article 12 of the Commonwealth Constitution was intended to fulfill the mandate of section 805.

Manglona said Article 12 is very clear in describing who can own what interests in land in the commonwealth.

"There seems to have been some circumvention of Article 12 in land transactions. That is what caused the misunderstanding going on now," he said.

"There has to be more than considering the economy. We must protect the people involved in the transactions. The court has gotten to the point of saying there has been circumvention, but it has yet to address the issue of restitution. It's unfair for someone to lose an investment along with the land," Manglona said.

Petition to solve Art. 12 crisis continues to draw local signatures

Spn Tribune Sept 10, 1993

MORE than 1,5000 eligible CNMI voters have signed a petition to the Legislature demanding that it "act now!" to solve the Article 12 crisis before adjourning for re-election campaigning.

Organizers said these petition drive will continue to be collected until action is taken on presently pending legislation aimed at resolving the Article 12 crisis.

"We want our elected leader to know how strongly we feel that everything we care about - our culture, our economy, even our personal relationships with each other - is in danger because of the continuing Article 12 crisis," said Connie Coward, one of spokesperson for the effort.

The group calls itself "S.M.A.R.T," which stands for "Saipanese Mobilized on Article 12." Its petition reads:

"IT'S TIME TO ACT! Legislators must solve the Article 12 crisis. We, the undersigned, US citizens and residents of the CNMI, call upon our Legislature to act without delay to solve the Article 12 crisis and stop the lawsuits.

This crisis must be solved before our economy is ruined and more people lose their jobs. It must be solved before our international reputation as a secure place to do business, is destroyed. It must be solved before we lose faith in each other and in our word of honor.

We want our legislators to face this problem now and pass legislation before leaving Capitol Hill to campaign for re-election."

"The Legislature has come a long way in recognizing the problem, holding hearings and drafting legislation," said S.M.A.R.T spokesperson Coward. "But now, with very few days remaining in this legislative session, we want them to know that we expect them to pass the Article 12 bill now before them (SB 8-124) and get the Governor to sign it, before they start campaigning," she added.

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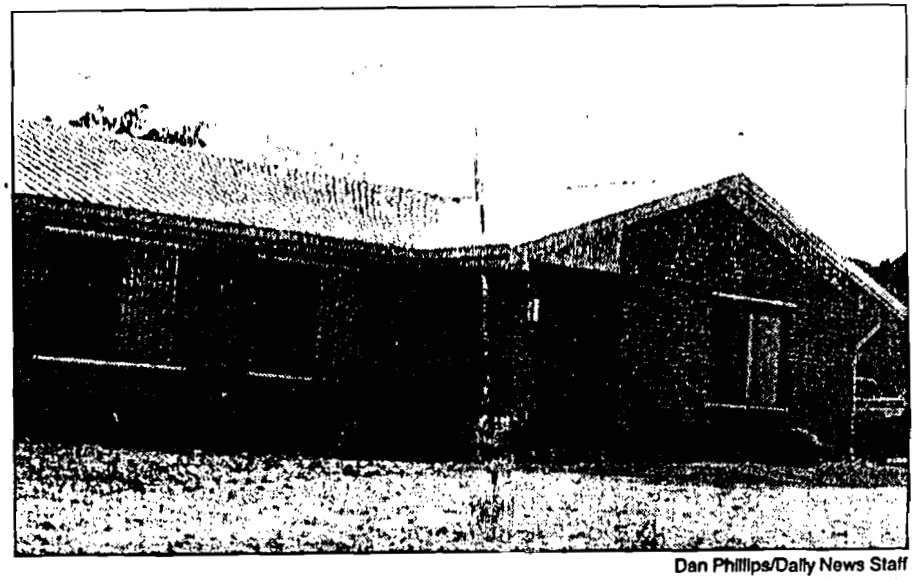

Dan Phillips/Daily News Staff

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Signers of the Senate Committee Report: Sen. Edward U. Maratita, Sen. Paul A. Manglona. Sen. David M. Ching, Sen. Juan S. Torres and Sen. Francisco M. Borja. Dated July 23, 1993.

Governor approves limits on legal fees

By DAN PHILLIPS
Daily News Staff

It wasn't what he wanted, but Gov. Larry I. Guerrero went ahead on Wednesday and signed into law a bill that limits the amount of legal fees a lawyer can charge in lawsuits involving Article 12 of the Commonwealth Constitution.

The bill he signed, HB 8-295, seeks to limit attorney's fees in Article 12-related cases to a "reasonable" amount and sets a cap of $700 per hour on such cases.

The Senate bill, which also addresses other controversial issues involving in Article 12 lawsuits, is under review in the House, and several amendments are being considered.

Lobbyists from the group calling itself SMART — Saipanese Mobilized on Article Twelve — toured the Legislature on Wednesday, are seeking support for the Senate bill and urging that action be taken before the November election.

SMART has gathered more than 2,000 signatures on a petition calling for the Legislature to act before its members turn their attention to campaigning for reelection.

One growing concern is that the desired action will not happen if Democrat Froilan Tenorio becomes governor and if there is significant turnover in the next Legislature.

Concerns over contingency-fee agreements in lawsuits involving alleged Article 12 violations led to the new law.

The agreements provide that if a lawyer regains land for a client in an Article 12 case, the lawyer will receive a payment equal to a percentage of the value of the land recovered.

The agreements leave the lawyer with nothing if no land is recovered.

Lawsuits alleging violations of Article 12, which limits ownership of commonwealth land to people of Northern Marianas descent, have been blamed for causing poor economic conditions in the commonwealth.

The bill states that a "substantial reason" for the failure to reach settlements in the lawsuits are the contingency-fee agreements, which provide that the lawyer will be paid a greater percentage when the case proceeds further through the court system.

Saipan Tribune 9/24/93

SMART lobbies for passage of yet another Article 12 bill

MEMBERS of the group, Saipanese Mobilized on Article 12 (SMART), this week lobbied for passage of a bill aimed at allowing developers who lose investment due to the land alienation clause, to seek compensation.

Senate Bill 8-124, introduced by Sen. Paul Manglona, was passed by the upper house last month and is now before the House of Representatives.

The measure also puts a cap on contingency fees attorneys can receive under Article 12-related cases and provides for a statute of limitations to file such cases. Article 12 limits land ownership in the CNMI to persons of NMI descent.

A landmark decision by the Commonwealth Supreme Court in 1991 led to a near-avalanche of similar lawsuits, in which local landowners, claiming Article 12 violations, sought the return of their lands. Scores of litigation remain in the local courts.

Mary Aldan-Pierce, a defendant in the landmark case, was one of the members of the group who lobbied Wednesday for the bill's passage.

News of the lawsuits have had a negative impact on the local economy and is blamed as a major reason for the economic slowdown. Business leaders and other supporters of the Senate bill say its passage will go a long way in easing investors' fears that the Commonwealth is an unsafe place to invest.

"We support the Senate bill because it will comprehensively address concerns and problems with Article 12. We feel it is important to do something now. If we wait until after the election, we may have new lawmakers unfamiliar with Article problems and we will have to re-educate a whole bunch of new legislators," Aldan-Pierce.

Also in the group was Lucy Nielsen, who faces losing land near Mt. Tapochau she said she acquired in good faith. Nielsen's case is before the court.

"We support the intent of Article (to restrict land ownership to the indigenous people) but some of these lawsuits are being initiated out of sheer greed," Nielsen said.

Aldan-Pierce said the group met with at least six representatives, including the Speaker Thomas Villagomez and Vice Speaker Diego Benavente, who said they will support the bill during its floor vote.

Rep. Heinz Hofschneider, when asked for support, said he would take it a step further by providing language seeking stiffer penalties for attorneys who are found to be fraudulently engaging in Article 12 litigation. He said he would amend the bill to include grounds for disbarring an "attorney who willingly violates the provision of the bill."

Aldan-Pierce added that her entourage also visited Gov. Larry Guerrero, who assured the group he will sign the bill once he receives it from the Legislature. Guerrero has said he will sign a House bill limiting contingency fees for attorneys prosecuting Article 12 cases. That measure has already been transmitted to him.

About 1,700 people have signed the SMART petition urging passage of "Article-12 remedy" legislation, according to Aldan-Pierce.

Law limiting Art.12 attorneys' fees to $700 signed

GOV. LARRY Guerrero late Wednesday signed the first law intended to curb abuses of Article 12-related cases.

Public Law 8-29, formerly House Bill 8-295, limits and controls the billing practices of attorneys who prosecute claims under the land alien provision of the Commonwealth Constitution.

Before the law, it was customary for an attorney to charge a contingency fee after a case has been won. That could lead up to hundreds of thousands of dollars.

"Uncertainties over land titles threaten the Commonwealth economy and create inequities for many landowners. Landowners, investors, real estate companies and others need solutions that are fair, legally sound, and equitable to all parties. This law is a part of the solution to the land title question," the governor said in a statement to legislative presiding officers shortly after the signing.

The new statute is designed to provide the courts with some guidelines on how attorneys in such cases are to be compensated.

By setting a $700 per hour ceiling an attorney exorbitant billing practices by some attorneys can be addressed, the bill's author, Rep. Stanley Torres, said.

The governor waited until the last day before the bill dies before signing because of concerns about the constitutionality of some of its language.

The governor has 40 calendar days to act on non-appropriation legislation.

"All attorney's fees in cases brought in the Commonwealth involving Article 12 shall be reasonable and any fee in excess of a reasonable amount is void and an attorney shall collect only quantum merit for services actually rendered," an amendment added before its House passage reads.

A similar legislation originating from the Senate is now before the lower chamber. Authored by Sen. Paul Manglona, Senate Bill 8-124 is a more comprehensive measure that provides compensation to developers who lose investments under such cases and sets a six-year limit for filing Article 12-related lawsuits

Guerrero has said he will sign that bill also since "it contains some good points" missing in the statute he signed Wednesday. The new law deals only with attorneys fees.

Variety 9/24/93

Jr's Agenda

by John DelRosario

From Cooperation to Litigation: Much has been litigated, debated and published about Article XII which limits land ownership to the indigenous people here. The 9th Circuit Court of Appeals has knocked down the misapplication of the so-called "resulting trust" in some lawsuit. But it left the intent of Article XII fully intact—land ownership remains with the local people.

Recently, we have seen the emergence of the SMART Group who sees fit to leverage its own interest against lawmakers up for re-election regardless of the consequences. This move, in my view, is both selfish and unfair given the fact that a lot is at stake if this issue is mishandled by politicians succumbing to pressure from any and all special interest groups.

Subsection (a) of Section 806 of the Covenant Agreement says that we can subsequently regulate permanent and long-term interests in real property 25 years after termination of the Trusteeship Agreement. If in fact termination of the trusteeship came into effect in 1981, then there's still 12 more years to go before the people (emphasis added) may decide to either kill it altogether, amend or keep it intact. It would seem to this scribe, therefore, that the best that anyone could do at this juncture is live with it.

It brings into focus whether the legislation now under review before the legislature is the appropriate course of action, or is it a tool of convenience to relief attorneys who helped mess this issue beyond decency? Would the intended legislation withstand court scrutiny given the fact that it is both meddlesome and intrusive of the original intent of land ownership sp provided by both documents? Would its approval constitute an amendment to both pertinent Covenant and Constitutional provisions and does the legislature have the authority to amend either or both documents?

As much as I sympathize with those who claim ignorance of the law or have been victimized by the lack of clear cut provisions governing restitution or what have you, I question whether in fact you were and still are ignorant of both Covenant and Constitutional provisions. Are you sure your attorneys misread the spirit and intent of subsection (a) of Section 806 which says that we can only do something about it 25 years after termination of the trusteeship agreement?

I am also saddened to see a cultural transition from one of pragmatic resolution of problems—Pacific Way—to that of a very litigious society—the Western Way. I suppose this transition is inevitable given the increase in the number of lawyers who are, for the most part, responsible for all that have gone wrong with the Land Alienation provision.

I am also troubled by the question of relevancy of Article XII or Section 806 of the Covenant Agreement. In other words, if I could sell my land to a Mr. Kim for $1,000 per square meter, why should this provision limit my opportunities by selling it to a rich local who could only afford $40 per square meter? Isn't this part of the fallacy of this provision? I mean, if the provision is intended to see that my land remains in my hands, what good is it if it isn't mine any longer by selling it to a "we few" rich locals? I lose my land anyway, right? Why then the economic deprivation? It's fodder for you and I to play tug of war with for quite some time to come.

It boggles the mind however that half-cocked attorneys have used locals in the direct purchase of land chancing not only their clients' investments (or theirs for that matter) but the economic well-being of the CNMI? Have they done something to right their apparent misrepresentation of the true intent of the land alienation provision under the Covenant? Are the costs being shouldered by your clients or you yourself? If it is the former, are you saying there's no mal-practice or misrepresentation on your part?

I see that the proposed legislation is your easiest solution to glorify your purposeful and wrongful circumvention of the Covenant and Constitution of the CNMI? You got your millions then watch our people fight interminable feuds, right? I despise the legal architects of these land deals which have resulted in family feuds outside our television screen, disunity and the cultural transition from one of peace and cooperation to that of strife and litigation. Why can't legal eagles speak the honest truth for once in their lifetime? No wonder lawyers are the only ones making money even during a global recession.

I wish to beg our lawmakers and the SMART Group to consider this issue with great caution in that I am one firm believer in an old Chamorro saying: "Todos ma afuetsas ti mauleg." In other words, anything that is forced just doesn't yield anything good at all. For instance, a mango that ripens in its natural way tastes sweeter than the one where potassium nitrate is used. Thanks and let's not sacrifice nor deny the unborn Chamolinians their rights to land ownership. They deserve protection and it is our responsibility to stand guard on their behalf.

Special House panel to hear S.B. 8-124

A SPECIAL committee of the House of Representatives will soon be conducting a public hearing on a Senate bill that seeks to address current problems with Article 12 of the Constitution.

In a memorandum he issued last Friday, House Speaker Thomas P. Villagomez formed a special committee to deliberate on Senate Bill 8-124, a measure that addresses four salient points in the interpretation of the land alienation provision of the Constitution.

The special committee will be chaired by Rep. Stanley T. Torres, himself an author of an Article 12 bill that recently became law, House Bill 8-295, now Public Law 8-29.

Other members of the committee are Vice Speaker Diego T. Benavente (vice chairman), and Reps. Francisco DLG. Camacho, Jesus T. Mafnas and Herman T. Guerrero.

According to the speaker's directive, the public hearing must be held no later than 10 a.m. Friday, October 1, 1993.

"The deadline is necessary as the subject bill will appear on the next calendar for action on second reading. I want to give the members the opportunity to review the committee's findings on this legislation before the next session," said the speaker.

The creation of a special committee on S.B. 8-124 came after the House passed the measure with amendments on first reading in a session last Thursday.

The same bill went through at least two public hearings at the Senate, conducted by the Senate Committee on Resources, Development and Programs.

During the Thursday session, the House members appeared ready to cast their votes in support of the bill, but the amendments offered by Rep. Francisco DLG. Camacho made them ask for more time to study the changes.

"We need to let our people come in and let us know how they feel about the amended version of S.B. 8-124. Based on the input we get, we would then make a presentation of the revised measure before the full House," said Torres in an interview yesterday.

He added that his committee is looking at a possible public hearing either on Wednesday or Thursday to solicit public comments on the bill and the accompanying amendments.

The proposed revisions on the measure were contained in a six-page amendment which sets forth the legal requirements and procedures to enforce Article 12 against corporations and provides for the severability of contractual provisions violating Article 12.

S.B. 8-124 seeks to place a cap on contingency fees lawyers charge Article 12 litigants and shortens the period within which Article 12 claims may be brought up by the original landowner versus the purchaser of the real estate property.

Aside from that, it does away with the resulting trust theory as applied by CNMI courts on Article 12 cases and provides restitution for those who lose their investments on a property reclaimed through Article 12.

Article 12 of the Constitution prohibits persons not of Northern Marianas descent from owning land in the Commonwealth. This means the most foreign developers could hope for in terms of real estate interest is 55 years maximum.

Such a restriction had developers trying various ways on gaining long term land interest, including the use of local dummies who pose as land buyers for them.

Because the Commonwealth Recorder's Office has no means to ascertain the source of the money used in any land transaction, the valid transactions could not be distinguished from those that violate the land alienation provision.

Such uncertainty has projected an image from investors that in the Commonwealth, a good faith land deal may not turn out to be a good faith land deal after all. (RHA)

Marianas Variety 9/30/93

House hears Senate Bill 8-124 today

By Rafael H. Arroyo

A SPECIAL committee of the House of Representatives is conducting a public hearing today on a controversial Senate bill that would seek to address current problems with Article 12 of the CNMI Constitution, this was learned yesterday.

A notice for a public hearing dated September 27 was issued by Rep. Stanley T. Torres who was recently tapped by House Speaker Thomas P. Villagomez to head the special panel tasked with coming up with recommendations on Senate Bill 8-124.

The hearing is scheduled for today, September 30, 10:00 a.m. at the House Chamber.

The measure, which was authored by Senator Paul A. Manglona, addresses four salient points in the interpretation of the land alienation provision of the Constitution in contrast with House Bill 8-295, now Public Law 8-29, which is said to address only one aspect of the more comprehensive Senate bill.

S.B. 8-124 seeks to place a cap on contingency fees lawyers charge Article 12 litigants and shortens the period within which Article 12 claims may be brought up by the original landowner versus the purchaser of the real estate property.

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Such a restriction had developers trying various ways on gaining long term land interest, including the use of local dummies who pose as land buyers for them.

Torres' call for a hearing was in consonance with an earlier directive issued by the speaker that a public hearing on the bill must be held no later than 10 a.m. Friday, October 1, 1993.

The creation of a special committee on S.B. 8-124 came after the House passed the measure with amendments on first reading in a session last Thursday.

The same bill went through at least two public hearings at the Senate, conducted by the Senate Committee on Resources, Development and Programs.

"We need to let our people come in and let us know how they feel about the amended version of S.B. 8-124. Based on the input we get, we would then make a presentation of the revised measure before the full House," said Torres in an earlier interview.

The proposed revisions on the measure were contained in a six-page amendment which sets forth the legal requirements and procedures to enforce Article 12 against corporations and provides for the severability of contractual provisions violating Article 12.

Torres said the amendments were what prompted lawmakers to suggest a House public hearing on the bill, apart from the two previous fora held at the Senate.

In his notice of public hearing, Torres encouraged the general public to submit written testimony on the legislation.

On the other hand, he said persons giving oral testimony would be limited to no more than 10 minutes per person to accommodate everyone who wishes to address the committee.

"I ask witnesses to focus their testimony on the legislation and the issues and refrain from making personal attacks or insults," said Torres.

Letters...

(Continued from page 4)

what is "selfish" and "unfair."

Literally thousands of local jobs and hundreds of millions of dollars in new investments are at risk today because a handful of former landowners want to undo those transactions like they never happened and get a financial windfall in the bargain, all courtesy of Article 12.

Hundreds of local people can't sell their land — and even if they could, they'd receive only a fraction of what their land was worth just a few years ago. That's all because the Article 12 lawsuits have made it impossible to predict when land title can be successfully challenged; so title insurance against Article 12 claims can't be bought, and lenders to finance land purchases can't be found.

All of us are watching as local government's budget deficit soars out of control. The deficit grows because tax revenues are down, because the two highest generators of tax revenues — real estate transfers and construction — have come to a virtual standstill. So who's hurt by that? Each and every person, who now faces either higher taxes, or fewer public services, or both.

Putting our economic interests aside, what about our personal reputations as people of honor? Each of us must now stand by, while the behavior of a few says to the rest of the world that the people of this Commonwealth can't be trusted to stand by a deal.

So, if you're looking for "selfishness: and "unfairness" when it comes to Article 12, John, forget about SMART and go write down the names at the plaintiff end of those 28 pending Article 12 lawsuits.

Is SMART a special interest group? I guess it depends on whether you define "special" to mean "narrow" — and therefore now representative of the public good — or "focused" on a particularly important subject.

We're certainly not narrow, but we plead guilty to being focused. I can't remember the last time that close to two thousand local residents get together to put their names behind an effort to solve a crisis. You bet we have a common interest — an interest in acting now, before it's too late, to get our economy back on track, local jobs saved, new investments preserved and our reputations restored.

That brings us to the final question — whether SMART is doing something wrong, or reckless, or counter to our local culture, in demanding that our lawmakers act on pending Senate Bill 8-124 before the November election.

I would ask the question differently: if it's wrong to push hard for legislative action before an election, why bother to have the Legislature in session at all? We didn't call this election; we didn't plan the timing to occur this way. But like it or not, the Article 12 crisis is upon us now; it is deepening day by day, and close to two thousand eligible voters (and probably thousands more) don't see any reason why an election should serve as the excuse not to address it and solve it now.

We have every right to hold our lawmakers accountable for what they do — and don't do — between elections. And right now, the real issue is whether House members will or won't act on Senate Bill 8-124.

You're right, John, "great caution" is called for — and SB 8-12 was drafted with great caution by people who understand the crisis and have approached its solutions from various angles. The irresponsible thing would be to avoid dealing with the issue under the guise of "needing more time to read the bill" or "seeking more public comment."

This mango tree is ripe, John, and it's time to pick it and savor the sweet taste of a Commonwealth citizenry up to the task of solving its own problems.

Marian Aldan-Pierce
SMART member

Pacific Star 10/1/93

LETTERS

Who's selfish, who's unfair

LAST Friday "JR's Agenda" in the Marianas Variety once again took up the Article 12 issue. And although John made some good points about the dangers of too much litigation in our society, he went way off track, in my opinion, in how he described the group SMART (Saipanese Mobilized on ARTicle 12) which I helped found.

Specifically, he accused SMART of "leveraging our own interest against lawmakers up for reelection regardless of the consequences." He called that "selfish and unfair, given the fact that a lot is at stake if this issue is mishandled by politicians succumbing to pressure from any and all special interest groups."

John's accusation raises three related questions, namely: (1) whether SMART is a so-called "special interest group" which (2) is acting "selfishly" and "unfairly" when (3) it seeks to get lawmakers to act on an issue in the period before an upcoming election.

First, let's talk about who and

(Continued on page 18)

On my mind

By Ruth L. Tighe

MOST of us are familiar with the saying "If it ain't broke, don't fix it," a saying that reflects both common sense and wisdom. We say it about things-an engine, a device or an appliance-made up of machine tooled and perfectly balanced interconnecting, interdependent parts. The risk, in "fixing" whatever "it" is, is that one or more of the parts may break, or lose its shape, that the right replacement part won't be available, and that therefore the whole mechanism will be thrown off-balance-never again to work as well as before. Which is why, if something isn't broken, it's usually wiser to leave it alone.

The same can be said of organizations, institutions, and even systems of governance. The risk here, as well, is that an attempt to "fix" one or more parts may throw the whole off balance, never again to work as well as before.

The same can also be said of the CNMI Constitution. Voters will be asked, on the November ballot: should there be another constitutional convention? That is as it should be. As amended by the last constitutional convention, the CNMI Constitution now requires that the voters be asked that question every ten years.

The natural inclination is to answer such a question with a "yes." If given the chance, why not take advantage of it? I would argue, however, that in this case the answer should be "no."

In the first place, there's been no demand for it. There has been no common or consistent complaint regarding any restrictiveness, or injustice, or weakness of the Constitution. There just doesn't seem to be any generalized or unified sense that the Con stitution needs changing.

In the second place, as the November ballot indicates, there are other ways to correct dissatisfaction with the Constitution than by holding a constitutional convention. Changes can be proposed through legislative initiative. All it takes is a three-fourths majority in each house of the legislature.

Two such legislative initiatives are on the ballot this year. And if the voters agree with what their legislators have proposed, the Constitution will have been amended without the holding of a constitu-

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PACIFIC STAR
The People's Newspaper

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NMI may turn away tourists

THE OPENING of the new airport in Osaka, Japan next year will mean more visitors to the Northern Marianas but delays in the construction of additional hotel rooms may force the CNMI to turn away tourists, according to David M. Sablan, member of the board of directors of Marianas Visitors Bureau.

Sablan made the statement as he urged the Legislature to pass Senate Bill 8-124, which is expected to minimize land cases involving Article 12 of the Constitution.

The bill allows developers to recover investments on the land when they lose the so-called Article 12 cases. It also provides for a six-year period (after the transaction) for filing of land claims.

Article 12 allows only persons of Northern Marianas descent to own land in the Commonwealth. About 20 cases have been filed in the local courts as landowners try to take back their properties after these were sold to other persons of Northern Marianas descent who, in turn, leased the properties to other people or corporations not eligible to own land or hold long-term interest (beyond 55 years).

In many cases the money used to buy the land was provided by the ultimate tenant, although title remains in the local buyer's name.

In his oral testimony before a special House committee, Sablan said the CNMI has 2,800 hotel rooms at present and would need 400 new rooms next year.

On the other hand, Abel Olopai said new hotel rooms means more workers being brought in from other countries, who must also be provided with housing during their stay here.

Olopai said the Legislature

(Continued on page 2)

PACIFIC STAR 10/1/93

New law to stop windfall from Article 12 lawsuits

NEWLY signed Public Law 8-29 will stop the windfall for lawyers who win land claims under Article 12 of the Constitution, according to Rex Kosack, a lawyer himself.

He made the statement when asked to comment on the impact of PL 8-29, which was signed by Governor Lorenzo I. De Leon Guerrero on Sept. 22.

The new law (formerly House Bill 8-295) limits attorney's fees to not more than $700 per hour in any case filed in CNMI courts involving a land claim under Article 12. This is much higher than the $180 average hourly fee charged by lawyers on land cases.

Under PL 8-29, lawyers representing land claimants can charge contingency fees only upon winning a case. The law provides that fees must be reasonable but did not set a fixed amount.

The law itself recognizes that $700 hourly fee is "a very large fee and may be in itself excessive." Thus, PL 8-29 provides that it is not meant to restrict the court's ability to reduce the $700 per hour maximum if, after hearing, the fee is determined to be excessive or unreasonable.

"The Legislature finds that one substantial reason for the lack of settlements in these cases injuring both the plaintiffs and the Commonwealth in general is the excessive and unreasonable attorney's fees based not on the amount of work and effort in each case but on the value of land," the Legislature says.

Fees based on the value of land gives the lawyer control over land for an indefinite duration until the fees are paid, and may lead to additional litigation to determine the value of land to determine the amount of fees.

According to the Legislature, Article 12 cases have been pending in the Commonwealth for more than five years. Uncertainty over land titles has hurt the local economy.

"Landowners, investors, real estate companies and others need solutions that are fair, legally sound and equitable to all parties," Guerrero said in a message to the Legislature after signing PL 8-29. "This law is part of the solution to the land title question."

New provisions added to Article 12 bill

By DAN PHILLIPS
Daily News Staff

Two new sections have been added to Senate Bill 8-124, which would provide guidelines for the legal enforcement of Article 12 of the Commonwealth Constitution.

Yesterday's House public hearing was expected to be the last hurdle for the bill, which has widespread support and is being pushed hard by lobbyists who want the bill enacted before the November general election.

Lawsuits alleging violations of Article 12, which restricts ownership of commonwealth land to people of Northern Marianas descent, have been blamed for weakening the commonwealth's economy.

The bill provides that if a corporation is found to have illegally purchased land, the titles to any land bought by the corporation would revert to the corporation's shareholders who are of Northern Marianas descent.

The bill addresses several areas of controversy involved in the lawsuits, including:

■ Limiting the amount of fees any lawyer handling an Article 12-related case can charge. Gov. Larry I. Guerrero recently signed into law a bill that limits fees to $700 an hour, but the Senate bill would limit fees to 20 percent of the recovered land's value or $700 an hour, whichever is less.

■ Providing compensation to landowners and lessees who lose land or improvements due to a court's ruling that transactions involving the land violated Article 12.

The only time that equitable adjustment would not be in order is if fraud was committed in acquiring the land.

■ Defining under what circumstances a "resulting trust" would be created. The provision would further strengthen a recent decision by the U.S. Ninth Circuit Court of Appeals, which overturned a ruling by the Commonwealth Supreme Court.

The resulting trust provision of the bill dictates that a resulting trust cannot arise in favor of the person who paid the purchase price to buy the land. This means that if a person of non-Northern Marianas descent supplies the money to buy land to a person of Northern Marianas descent, there can be no conclusion that because the former supplied the money he or she owns the land.

■ Setting a statute of limitations for the filing of Article 12-based lawsuits. This section would require a landowner with an Article 12-based claim to file suit within six years of the alleged violation. Otherwise, the suit would be barred.

The existing limit is 20 years.

The bill would also provide a grace period of six months for the filing of lawsuits before the new statute of limitations takes effect.

■ Establishing guidelines for handling findings of Article 12 violations by corporations. This section, added by the House, provides that if the requirements set forth in the Commonwealth Constitution are met with regard to land ownership by corporations then a corporation is eligible to own land.

"No additional criteria shall be considered," the bill dictates. This language would seemingly shut the door on lawsuits that allege that corporations were set up to meet the legal definition, but were actually "shams" set up and controlled by people not of Northern Marianas descent who wanted to buy and sell land without the restraints of Article 12.

The only challenges to a corporation's true organizational status could be brought by creditors of the corporation in connection with a land transaction according to the bill.

In addition, the bill provides that if a corporation is found to have illegally purchased land the titles to any land bought by the corporation would revert to the corporation's shareholders who are of Northern Marianas descent.

■ Making sure that courts consider land transaction contracts to see if any sections of the contract are still enforceable despite a finding of an Article 12 violation.

Focus
10/1/93

Jr's Agenda

by John DelRosario

During the economic boom of the last decade, lawyers in concert with real estate brokers, became what I term the "Architects of Circumvention" or in plain language "Evil Geniuses" of Article XII. Millions of dollars were made by this group. It isn't that they became rich that I find bothersome. Rather, it is the scheme which they came up with defrauding people of their land and lifetime savings every which way you can imagine.

In other words, the evil geniuses embarked on a clever scheme involving the purchase of indigenous land. May I illustrate a point: Roger Gridley, a former MHS teacher who went into the real-estate brokering business purchased a piece of property from an old man. Knowing that he is prohibited by law from owning land here, he established a front company known as Realty Trust and deposited the title to the land in this company.

Subsequently, this piece of property was sold to Chuck Jordan who in turn deposited the title of the property under another front company known as Bonita Vista Properties Ltd. The nervous fun ride started from the original land transaction with Gridley. Well meaning people (locals and non-locals) purchased land from Bonita Vista Properties when the CNMI Supreme Court decided—in similar land deal—that the original land transaction was illegal from the very beginning.

The appropriate query in this case is: Who victimized who? Was it the late Tun Anselmo Iglesias the original land owner? Or was it Gridley and Jordan who knew that their scheme will someday blow up in their faces? I would have to say it is the latter. It is a risk and too great a risk and scheme so undertaken with full knowledge that their transaction is in complete violation of the intent and purpose of Article XII. The next obvious question that victims must ask themselves is: Who did you deal with in terms of sinking your investments in these properties? The late Iglesias or Jordan? If it is the latter then it is all too clear that the person you must sue is Bonita Vista Properties!

Why Bonita Vista Properties? You must force this company to protect and make good of its sale of property to you the buyer. Let Bonita Vista Properties sue the day lights out of Realty Trust for failing to ensure that the property it has sold is legal. These fraudulent transactions are responsible for all that have gone wrong with land schemes cleverly designed to circumvent the purposes and intent of Article XII. Unfortunately, it has blown up into the face of the very people who served as evil architects of circumvention. Guess this is where I find truth to an old adage "money is the root of all evil". How true in the instance case that money corrupts, right?

It is interesting too that Duty Free Shoppers has put together a documentary titled "Victims of Article XII". May I ask once more whether in fact the people who purchased land from Bonita Vista Properties Ltd. are in fact victims of Article XII or were they victims of a fraudulent scheme conceived and born by both Bonita Vista Properties and Realty Trust? I sympathize with some of my friends who detrimentally relied upon the words of Bonita Vista Properties to which you sank your lifetime savings. Your alternative and solution? File a lawsuit against the company as one buyer did to retrieve her investments. It is the only route you now have to secure your money. To vent your frustrations by barking up the wrong tree isn't going to get you anywhere.

The issue has now been brought to the legislature for disposition. While the legislature claims to have every right to legislate on issues of public interests, I seriously doubt that it (legislature) has the authority to amend court decisions, the Constitution and the Covenant. Only the people, gentlemen, can amend the purposes and intent of Article XII, no more, no less. Mind you, under a republican form of government only the courts are permitted to interpret laws that you, in conjunction with the executive branch have seen fit to approve. In other words, leave legal interpretation of laws to the courts. That's where it belongs so leave it be!

I can understand and appreciate the pressure cooker situation that you're in today. We have a very vocal group of lobbyists (SMART) asking that you glorify the fraudulent concoction of a group of attorneys and real estate brokers who made their millions and have quietly exited the Saipan International Airport in search of another Bermuda. If you're worried by the two-thousand-some lobbyists knocking on your doors, may I ask that you equally consider the silent majority who are watching your every step on this issue. They too deserve your attention and sound judgement as public servants.

I will expose the role of other companies who have seen fit to wave a paper tiger at our face, including the voluntary infusion of funds to defray costs of bringing in "experts" or "authorities" on the now infamous concept known as resulting trust, etc. Believe me I have found the real experts in this case: IT IS US! Evidently, the termination of the trusteeship agreement came into effect in 1986. Therefore, there's still 18 more years to go before we decide the fate of Article XII.

Marianas Variety 10/1/93

EDITORIAL

How fair is fair

YESTERDAY, a whole throng of so-called Article 12 activists trooped to the Legislature to once again register their sentiments on the Senate bill to correct the inequities of the present law on land ownership in the Commonwealth.

True, Senate Bill 8-124 is an idea that has come of age, owing to the panic that goes with the economic uncertainties created by the controversial land alienation provision.

What better way to counter the negative publicity the CNMI is getting from the outside investment world than with all of the brightest heads in both government and private sector coming together for a solution fair to both the foreign investor and the indigenous land-owning class.

The bill is meant to address fairness as it tries to counter the common nature of man trying to get more than what is rightfully his.

It provides for just compensation for any developer that loses his investment at the same time that he loses his right to stay in the disputed real property.

With such a provision, local landowners will think twice before suing for the land he had already sold.

The six year statute of limitation also strengthens the fairness aspect of Article 12 since it limits the period within which greed may come into play.

But come to think of it, the intent of Article 12 goes beyond just the issue of fairness. It deals with a sacred hedge enjoyed by the local population over foreign powers who may come in and capitalize on the indigenous residents' inadequacies.

The average Chamolinian may tend to think, there is already fairness in Article 12 as is. Foreign developers have the money, technological expertise and business acumen to make more money. But they do not have the land.

The local person may not be as sharp nor has he the finances, but he has one thing going his way - he can own land.

In this regard, a most equitable exchange of assets take place, with both sides benefiting. The developer shedding money to use the local person's land.

The question now is why would the proponents of the Senate bill want to alter that give and take relationship.

Given that either side may go astray and try to breakaway from good faith, would there be no other way to ensure fairness is maintained.

If the proposed bill is enacted and the complexion of Article 12 is altered, what guarantee can the CNMI have that investors who are supposedly adopting a wait-and-see attitude would indeed come in and invest.

How would leaders feel if the foundation of the Article 12 restriction is weakened through the bill and still the investor goes to other places due to a perceived instability of some local policies.

Or if such investors outrightly opts not to invest at all due to the global economic downturn that has affected even the US and Japan.

The CNMI resident will be left empty-handed.

No investment. Weakened protection for the indigenous population on land ownership.

Worse, foreign developers may become even bolder in trying to circumvent the land alienation provision considering that a new law have been worked out in their favor.

In this "dog eats dog," ruthlessly cold world of business, where all that matters is making money, that occurrence is not far fetched.

We share in the concerns of the indigenous people with regards to this issue.

The most appropriate way is to leave Article 12 untouched and just let the developer watch his step and not try anything foolish like going around such restriction.

Needless to say, the local landowner should also shape up and renounce greed as soon as he feels it in his system.

That way he would deserve the protection given him by the Constitution.

Support for S.B. 8-124 floods in

SENATE Bill 8-124 will correct the CNMI's Supreme Court's error in its judgment on two landmark Article 12 cases, as well as provide temporary relief to victims of Article 12 who stand to lose everything if this bill is not enacted into law.

This was the statement of former Lieutenant Governor Pete A. Tenorio who joined a large throng of "Article 12 activists" in supporting the pending measure before the House of Representatives yesterday.

"Pending suits has had an enormous and possibly irreversible impact on future investments on

Pete A. Tenorio

privately-owned land in the CNMI. Land values had dramatically decreased to ridiculously low levels now that even with the deflated value, land transaction is practically dead," said Tenorio as he took on the floor during the forum conducted by a special House committee on the important measure.

More than a hundred people packed the House chamber yesterday for one final attempt to influence the decision of the lower chamber on the bill that is expected to address problems equated to the controversial land alienation provision. Most testimonies yesterday were in support of the measure.

Witnesses took the stand five at a time and were asked to limit their testimonies to ten minutes.

In his testimony, the former lieutenant governor noted that real estate property on the island has become idle due to Article 12.

"Signs for sale or lease of lands are all over our island, but nobody is paying attention. Major investment plans are either temporarily or permanently shelved due to investors insecurity and concern about the CNMI's land problems under Article 12," said Tenorio.

"It is bad enough that we have current laws and policies which frustrate investors and which also played a major role in discouraging investment. The ultimate reason which will permanently discourage long-term investment is if our government does not provide appropriate protection to vestors," Tenorio added. S.B. 124 seeks to place a cap on contingency fees lawyers charge Article 12 litigants and shortens period within which Article claims may be brought up by original landowner versus purchaser of the real estate property.

Aside from that, it does away with the resulting trust theory applied by CNMI courts on Article 12 cases and provides restitution for those who lose their investments on a property claimed through Article 12.

Article 12 of the Constitution prohibits persons not of North

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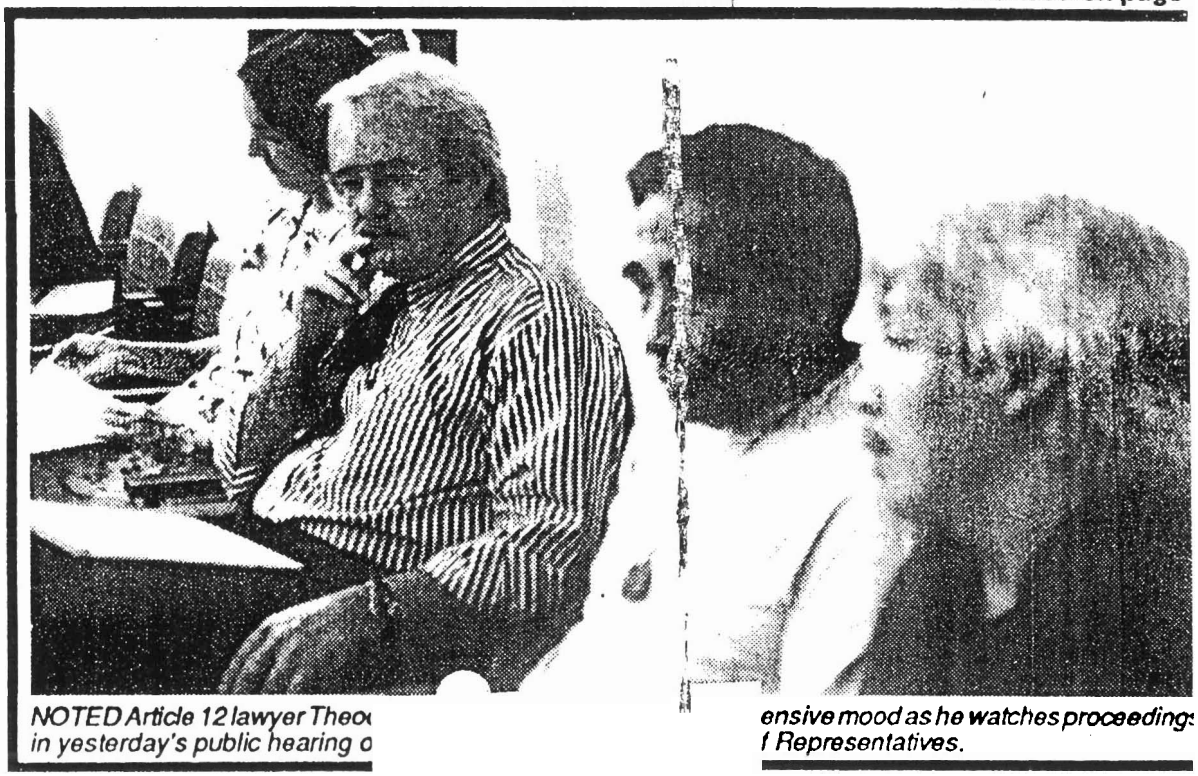
Marianas Variety 10/1/93



NOTED Article 12 lawyer Theo in yesterday's public hearing o

ensive mood as he watches proceedings f Representatives.

Support. . .

continued fro. page 1

Marianas descent from owning land in the Commonwealth. This means the most foreign developers could hope for in terms of real estate interest is 55 years maximum.

Such a restriction had developers trying various ways on gaining long term land interest, including the use of local dummies who pose as land buyers for them.

Because the Commonwealth Recorder's Office has no means to ascertain the source of the money used in any land transaction, the valid transactions could not be distinguished from those that violate the land alienation provision.

According to Tenorio, should it become law, S.B. 8-124 will not only restore investors confidence, but more importantly will provide fairness and equal protection to citizens and investors who are now or could be potential victims of judgment error on the ' of our Supreme Court judges i.. .eir interpretation of Article 12," said Tenorio.

He was apparently referring to the recent decision of the US Ninth Circuit Court that the local court's interpretation of the "resulting trust doctrine was wrongly applied on CNMI Article 12 cases.

He said what this doctrine had done when applied to Article 12 cases is to provide a legal excuse to file a lawsuit, based not on direct violation of Article 12, but excuse based on the doctrine that someone is used to purchase the land.

"Therefore, we question not the real issue of violation of Article 12, but the motive and the integrity of the individuals involved in the transaction," said Tenorio.

He added that so long as land title is not transferred from a NMI descent person to a non-NMI descent person, any transaction is legal, regardless of whose money is used.

"It is wha' recorded in the purchase doc nts that mattered most. If the legal document indicated the new land owner to be of NMI descent, then that transfer of land title is legal and valid," maintained Tenorio.

Marian Aldan-Pierce, herself involved in the Aldan-Pierce v. Mafnas litigation, and is one of the founding signatories for "Saipanese Mobilized on Article 12," also testified yesterday in favor of the subject bill.

"I have become very aware of how cruel and unfair Article 12 can be if interpreted as it currently is by our Supreme Court. As a businesswoman, I have watched in dismay as our development stopped, construction activities dwindled, and investors fled. As a mother, I worry about our children and what kind of future they will have here. As a taxpayer, I ıder where we are going to get ... money to run the government, to pave our roads and improve infrastructure and to educate our children," said Aldan-Pierce.

Saying all such adversities are unnecessary, she said the bill will help a great deal to resimplify Article 12 and provide rules that all can understand. It will also help reestablish the CNMI's credibility in the business community.

"We must claim our honor and self-respect. For the sake of the thousands of people of NMI descent, less the 20 plaintiffs, please pass this legislation," she pleaded.

But despite the apparent general approval on the bill yesterday, there were also those who felt Article 12 should be left as is.

"The passing of the subject bill will erode the integrity of the intention of Article 12, p e an undeserve nomic burden o the innoce. ndowner and dete him from exercising a legal right," private citizen Antonio S. Mun said in his testimony.

He said the bill likewise wil absolve any local fronts from an liability, penalty or punishment thereby opening the doors for mor local fronts purchasing leased prop erty for an enormous profit.

"Article 12 was created to pre serve local land ownership an control. By giving in, we will b sending a message that our value can be compromised," said Muna

"If economic reality precludes us from enforcing Article 12, then we must decide to change it. But it is only after we change it can we accept any other real property investments than the ones it currently permits. But for now, we as a people must be committed to uphold it," he added. (RHA)

Members of the House Special committee on Senate Bill 8-124 listen intently to testimonies delivered during yesterday's forums on Article 12.

Article 12: Yet another option

By DAN PHILLIPS
Daily News Staff

With years of legal fighting still to go in cases involving alleged violations of Article 12 of the Commonwealth Constitution, many ways to solve the problem are being offered.

The Legislature is now considering a bill that would instruct the court system on how to handle cases involving Article 12, which restricts ownership of commonwealth land to people of Northern Marianas descent.

John T. Lizama, one of the few lawyers of Northern Marianas descent and a delegate to the second Constitutional Convention in 1985, has a different solution than any of those discussed so far.

"If fee simple title is taken away because of a violation of Article 12, then why not have the land forfeited to the government, so that the whole community can benefit from the land?" Lizama asked.

Most of the Article 12-based cases involve individual landowners trying to regain land they sold years ago on the basis that either people of Northern Marianas descent or corporations acted as fronts for outside investors who bought and sold the land despite not being eligible to hold title.

Lizama said that there are some clear violations of Article 12 out there, but that he doesn't understand why a landowner who made money from a sale of property should benefit by getting land back because of an Article 12 violation.

Instead, he said, the land should be forfeited to the government, which would in turn have the responsibility of reaching a reasonable settlement with the owners or leaseholders of the disputed land.

He cited as an example the case involving the Hotel Nikko, which has threatened to pull out of Saipan if it loses the case pending in the Superior Court.

"If the people who sold the land to Nikko profited from the deal, why should they get the land back? A deal is a deal, right? If there was a violation, the land should be forfeited to the government, which should in turn renegotiate with Nikko," Lizama said. "That way, all of the people in the commonwealth benefit, the developer does not lose his investment and the original landowner is not unjustly enriched."

The exception, he said, should be in cases where there was clearly fraud involved.

"If, for example, some brokers concocted a plan to have a third party get land from a little old lady and bought the land for $10 per square meter while knowing it was actually worth $65 per square meter, and hid that information from the old lady, then that's fraud," Lizama said.

"If the buyer was only used, and didn't really take part in the transaction, and if the old lady said she relied on the broker and was taken advantage of, then that's where Article 12 comes into play," he said.

The current push for legislation to define what happens with controversies involving Article 12, Lizama believes, comes because a lot of people have lost faith in the court system, which has yet to decide many key issues.

"I think the judiciary should be trusted. It's bad when it isn't trusted. If it isn't trusted, we might as well close it," he said.

Lizama said he has confidence that the Commonwealth Supreme Court will honor a recent decision made by the U.S. Ninth Circuit Court of Appeals, which found that the CNMI Supreme Court erred in using the resulting trust doctrine in finding an Article 12 violation in the Ferreira v. Borja case.

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Suit seeks new route on Article 12 issue

Potowatomie case looks at company land ownership

By DAN PHILLIPS
Daily News Staff

With efforts at resolving problems related to lawsuits involving Article 12 of the Commonwealth Constitution stalled in the Legislature, another lawsuit has been filed in an attempt to resolve land transactions involving corporations.

Potowatomie, Inc., a corporation owned by Saipan-based lawyer Bob O'Connor, filed suit in Superior Court on Aug. 26 to obtain a court ruling on the legal status of land involving in the Coral Island Condominiums on Mount Tapotchau, Saipan.

The suit seeks an order declaring Jose Terlaje legal owner of the land and declaring valid a lease assignment from WDI Japan Co., Ltd. to Potowatomie.

Named as defendants are Deborah J. High, Char[illegible]. Jordan, Stephen Fisher, Jose C. Terlaje and Jose C. Terlaje, Jr., Regina C. Terlaje, WDI Saipan Co. and WDI Japan Co., the commonwealth government and the Marianas Public Land Corp.

Potentially involved in the suit, filed by Michael W. Dotts of O'Connor's law office, is section 6 of Article 12, which deals with land transactions involving corporations.

Dotts said the government and MPLC are named as defendants to "ensure that no forfeiture to the government has occurred under Article 12, section 6."

Article 12 limits ownership of commonwealth land to people of Northern Marianas descent.

The suit was filed because Potowatomie "can't trust the title and can't get title insurance on major issues affecting the title — namely Article 12," Dotts said.

The ownership of land by corporations is the subject of several lawsuits alleging violations of Article 12, but there have been no judicial rulings on the key issues involving corporations.

NORTHERN MARIANAS

Title: Article 12 continues to spawn litigation

Continued from Page 1

Three taxpayer-based lawsuits were filed at the end of last year, but they were dismissed in March when MPLC's legal counsel agreed to take action to address the same issues raised by the taxpayers.

Since the dismissals, the only activity in the three cases, which involve the Pacific Islands Club, the DFS store in Garapan and an undeveloped piece of San Roque land, has come in the form of efforts by lawyer Ted Mitchell to prove his theory that Saipan multi-millionaire businessman and special judge Larry L. Hillblom was behind the three cases.

Dotts, who represented Mario Taitano in one of those cases, said the cases could be re-filed because MPLC has not followed through on its promise to take action.

Mitchell, who represents several people who are trying to regain land they previously sold, also represents the Marianas Public Land Trust.

It is on behalf of MPLT that he has pursued his Hillblom conspiracy theory, which has led to nothing more than another theory — that seven lawyers conspired to pursue the three cases and that O'Connor supplied the financing. Mitchell claims to have proof of the new findings, which are being disputed.

What happens to the land?

The three taxpayer-based cases alleged that whenever a corporation violates Article 12, the land in question must be forfeited to the commonwealth government.

Mitchell, however, contended that what happens to the land depends on whether the corporation was ever qualified to own land in the first place.

Section 6 of Article 12 states: "Whenever a corporation ceases to be qualified under section 5, a permanent or long-term interest in land in the commonwealth acquired by the corporation . . . shall be immediately forfeited without right of redemption to the government."

Section 5 of Article 12 requires that any corporation, in order to legally own land in the commonwealth, must be owned 100 percent by people of Northern Marianas descent. The requirement was 51 percent prior to a 1985 constitutional amendment.

Mitchell's theory in his Article 12 cases involving corporations is that the corporations that allegedly violated Article 12 were nothing more than shams that had the names of people of Northern Marianas descent on paper to act as fronts for people not of Northern Marianas descent.

He argues that if a corporation was a sham and never qualified to own commonwealth land, it could never cease to be qualified.

The Potowatomie case, at least for now, does not involve Mitchell at all.

Guerrero bides time on Article 12 bill

By Rafael H. Arroyo

GOVERNOR Larry I. Guerrero has withheld action on an Article 12 legislation from the House of Representatives until he fully digests the mechanics of a similar but more comprehensive bill from the Senate on the same issue.

House Bill 8-295, which seeks to put a cap on fees paid attorneys litigating Article 12 cases, has remained on the desk of the chief executive since the House transmitted it last August 17th.

Guerrero said he is still awaiting word about the fate of Senate Bill 8-124 before making a decision on the pending measure, essentially because both bills address similar problems.

"We're still getting input from our legal advisers on the pending measure. We'll compare this with the Senate version and see which will best accommodate the concerns of our people," said Governor Guerrero in an interview with reporters yesterday.

Guerrero's apparent wait-and-see attitude on H.B. 8-295 is hinged on whether it would be better to just enact an omnibus legislation on Article 12 bill like the Senate measure, considering that it addresses the issue of attorneys fees as tackled in the House legislation.

"I need to digest both bills more. I am more concerned about the constitutionality of their provisions and has been discussing them with my legal advisers," said the governor.

H.B. 8-295 limits Article 12 lawyers to a maximum compensation of $700 per hour. It also prohibits contingency arrangements, where attorneys fees would be based on a percentage of the value of the land being recovered.

The bill was authored by Rep. Stanley T. Torres, with major amendments put in by Rep. Jesus P. Mafnas.

On the other hand, S.B. 8-124 addresses four controversial issues concerned with the interpretation of Article 12 issues.

Aside from also placing a cap on attorneys fees as in H.B. 8-295, it shortens the period within which Article 12 claims may be brought up by the original landowner versus the purchaser of the real estate property.

Aside from that, it does away with the resulting trust theory as applied by CNMI courts on Article 12 cases and provides restitution for those who lose their investments on a property that is reclaimed through Article 12.

Article 12 of the Constitution prohibits persons not of Northern Marianas descent from owning land in the Commonwealth. This means the most foreign developer could hope for in terms of real estate interest is 55 years maximum.

Such a restriction had developers trying various ways on gaining long term land interest, including the use of local dummies who pose as land buyers for them.

Because the Commonwealth Recorder's Office has no means to ascertain the source of the money used in any land transaction, the valid transactions could not be distinguished from those that violate the land alienation provision.

Such uncertainty has projected an image from investors that in the Commonwealth, a good faith land deal may not turn out to be a good faith land deal after all.

To correct such uncertainty, S.B. 8-124 was introduced.

The bill has passed the Senate after a series of public hearings and was quickly transmitted to the House where it is now pending.

Law limiting Art.12 attorneys' fees to $700 signed

GOV. LARRY Guerrero late Wednesday signed the first law intended to curb abuses of Article 12-related cases.

Public Law 8-29, formerly House Bill 8-295, limits and controls the billing practices of attorneys who prosecute claims under the land alien provision of the Commonwealth Constitution.

Before the law, it was customary for an attorney to charge a contingency fee after a case has been won. That could lead up to hundreds of thousands of dollars.

"Uncertainties over land titles threaten the Commonwealth economy and create inequities for many landowners. Landowners, investors, real estate companies and others need solutions that are fair, legally sound, and equitable to all parties. This law is a part of the solution to the land title question," the governor said in a statement to legislative presiding officers shortly after the signing.

The new statute is designed to provide the courts with some guidelines on how attorneys in such cases are to be compensated.

By setting a $700 per hour ceiling an attorney exorbitant billing practices by some attorneys can be addressed, the bill's author, Rep. Stanley Torres, said.

The governor waited until the last day before the bill dies before signing because of concerns about the constitutionality of some of its language.

The governor has 40 calendar days to act on non-appropriation legislation.

"All attorney's fees in cases brought in the Commonwealth involving Article 12 shall be reasonable and any fee in excess of a reasonable amount is void and an attorney shall collect only quantum merit for services actually rendered," an amendment added before its House passage reads.

A similar legislation originating from the Senate is now before the lower chamber. Authored by Sen. Paul Manglona, Senate Bill 8-124 is a more comprehensive measure that provides compensation to developers who lose investments under such cases and sets a six-year limit for filing Article 12-related lawsuits

Guerrero has said he will sign that bill also since "it contains some good points" missing in the statute he signed Wednesday. The new law deals only with attorneys fees.

Variety 9/24/93

Jr's Agenda

by John DelRosario

From Cooperation to Litigation: Much has been litigated, debated and published about Article XII which limits land ownership to the indigenous people here. The 9th Circuit Court of Appeals has knocked down the misapplication of the so-called "resulting trust" in some lawsuit. But it left the intent of Article XII fully intact—land ownership remains with the local people.

Recently, we have seen the emergence of the SMART Group who sees fit to leverage its own interest against lawmakers up for re-election regardless of the consequences. This move, in my view, is both selfish and unfair given the fact that a lot is at stake if this issue is mishandled by politicians succumbing to pressure from any and all special interest groups.

Subsection (a) of Section 806 of the Covenant Agreement says that we can subsequently regulate permanent and long-term interests in real property 25 years after termination of the Trusteeship Agreement. If in fact termination of the trusteeship came into effect in 1981, then there's still 12 more years to go before the people (emphasis added) may decide to either kill it altogether, amend or keep it intact. It would seem to this scribe, therefore, that the best that anyone could do at this juncture is live with it.

It brings into focus whether the legislation now under review before the legislature is the appropriate course of action, or is it a tool of convenience to relief attorneys who helped mess this issue beyond decency? Would the intended legislation withstand court scrutiny given the fact that it is both meddlesome and intrusive of the original intent of land ownership so provided by both documents? Would its approval constitute an amendment to both pertinent Covenant and Constitutional provisions and does the legislature have the authority to amend either or both documents?

As much as I sympathize with those who claim ignorance of the law or have been victimized by the lack of clear cut provisions governing restitution or what have you, I question whether in fact you were and still are ignorant of both Covenant and Constitutional provisions. Are you sure your attorneys misread the spirit and intent of subsection (a) of Section 806 which says that we can only do something about it 25 years after termination of the trusteeship agreement?

I am also saddened to see a cultural transition from one of pragmatic resolution of problems—Pacific Way—to that of a very litigious society—the Western Way. I suppose this transition is inevitable given the increase in the number of lawyers who are, for the most part, responsible for all that have gone wrong with the Land Alienation provision.

I am also troubled by the question of relevancy of Article XII or Section 806 of the Covenant Agreement. In other words, if I could sell my land to a Mr. Kim for $1,000 per square meter, why should this provision limit my opportunities by selling it to a rich local who could only afford $40 per square meter? Isn't this part of the fallacy of this provision? I mean, if the provision is intended to see that my land remains in my hands, what good is it if it isn't mine any longer by selling it to a "we few" rich locals? I lose my land anyway, right? Why then the economic deprivation? It's fodder for you and I to play tug of war with for quite some time to come.

It boggles the mind however that half-cocked attorneys have used locals in the direct purchase of land chancing not only their clients' investments (or theirs for that matter) but the economic well-being of the CNMI? Have they done something to right their apparent misrepresentation of the true intent of the land alienation provision under the Covenant? Are the costs being shouldered by your clients or you yourself? If it is the former, are you saying there's no mal-practice or misrepresentation on your part?

I see that the proposed legislation is your easiest solution to glorify your purposeful and wrongful circumvention of the Covenant and Constitution of the CNMI? You got your millions then watch our people fight interminable feuds, right? I despise the legal architects of these land deals which have resulted in family feuds outside our television screen, disunity and the cultural transition from one of peace and cooperation to that of strife and litigation. Why can't legal eagles speak the honest truth for once in their lifetime? No wonder lawyers are the only ones making money even during a global recession.

I wish to beg our lawmakers and the SMART Group to consider this issue with great caution in that I am one firm believer in an old Chamorro saying: "Todos ma afuetsas ti mauleg." In other words, anything that is forced just doesn't yield anything good at all. For instance, a mango that ripens in its natural way tastes sweeter than the one where potassium nitrate is used. Thanks and let's not sacrifice nor deny the unborn Chamolinians their rights to land ownership. They deserve protection and it is our responsibility to stand guard on their behalf.

Special House panel to hear S.B. 8-124

A SPECIAL committee of the House of Representatives will soon be conducting a public hearing on a Senate bill that seeks to address current problems with Article 12 of the Constitution.

In a memorandum he issued last Friday, House Speaker Thomas P. Villagomez formed a special committee to deliberate on Senate Bill 8-124, a measure that addresses four salient points in the interpretation of the land alienation provision of the Constitution.

The special committee will be chaired by Rep. Stanley T. Torres, himself an author of an Article 12 bill that recently became law, House Bill 8-295, now Public Law 8-29.

Other members of the committee are Vice Speaker Diego T. Benavente (vice chairman), and Reps. Francisco DLG. Camacho, Jesus T. Mafnas and Herman T. Guerrero.

According to the speaker's directive, the public hearing must be held no later than 10 a.m. Friday, October 1, 1993.

"The deadline is necessary as the subject bill will appear on the next calendar for action on second reading. I want to give the members the opportunity to review the committee's findings on this legislation before the next session," said the speaker.

The creation of a special committee on S.B. 8-124 came after the House passed the measure with amendments on first reading in a session last Thursday.

The same bill went through at least two public hearings at the Senate, conducted by the Senate Committee on Resources, Development and Programs.

During the Thursday session, the House members appeared ready to cast their votes in support of the bill, but the amendments offered by Rep. Francisco DLG. Camacho made them ask for more time to study the changes.

"We need to let our people come in and let us know how they feel about the amended version of S.B. 8-124. Based on the input we get, we would then make a presentation of the revised measure before the full House," said Torres in an interview yesterday.

He added that his committee is looking at a possible public hearing either on Wednesday or Thursday to solicit public comments on the bill and the accompanying amendments

The proposed revisions on the measure were contained in a six-page amendment which sets forth the legal requirements and procedures to enforce Article 12 against corporations and provides for the severability of contractual provisions violating Article 12.

S.B. 8-124 seeks to place a cap on contingency fees lawyers charge Article 12 litigants and shortens the period within which Article 12 claims may be brought up by the original landowner versus the purchaser of the real estate property.

Aside from that, it does away with the resulting trust theory as applied by CNMI courts on Article 12 cases and provides restitution for those who lose their investments on a property reclaimed through Article 12.

Article 12 of the Constitution prohibits persons not of Northern Marianas descent from owning land in the Commonwealth. This means the most foreign developers could hope for in terms of real estate interest is 55 years maximum.

Such a restriction had developers trying various ways on gaining long term land interest, including the use of local dummies who pose as land buyers for them.

Because the Commonwealth Recorder's Office has no means to ascertain the source of the money used in any land transaction, the valid transactions could not be distinguished from those that violate the land alienation provision.

Such uncertainty has projected an image from investors that in the Commonwealth, a good faith land deal may not turn out to be a good faith land deal after all. (RHA)

Marianas Variety 9/28/93

PACIFIC STAR 10/1/93

New law to stop windfall from Article 12 lawsuits

NEWLY signed Public Law 8-29 will stop the windfall for lawyers who win land claims under Article 12 of the Constitution, according to Rex Kosack, a lawyer himself.

He made the statement when asked to comment on the impact of PL 8-29, which was signed by Governor Lorenzo I. De Leon Guerrero on Sept. 22.

The new law (formerly House Bill 8-295) limits attorney's fees to not more than $700 per hour in any case filed in CNMI courts involving a land claim under Article 12. This is much higher than the $180 average hourly fee charged by lawyers on land cases.

Under PL 8-29, lawyers representing land claimants can charge contingency fees only upon winning a case. The law provides that fees must be reasonable but did not set a fixed amount.

The law itself recognizes that $700 hourly fee is "a very large fee and may be in itself excessive." Thus, PL 8-29 provides that it is not meant to restrict the court's ability to reduce the $700 per hour maximum if, after hearing, the fee is determined to be excessive or unreasonable.

"The Legislature finds that one substantial reason for the lack of settlements in these cases injuring both the plaintiffs and the Commonwealth in general is the excessive and unreasonable attorney's fees based not on the amount of work and effort in each case but on the value of land," the Legislature says.

Fees based on the value of land gives the lawyer control over land for an indefinite duration until the fees are paid, and may lead to additional litigation to determine the value of land to determine the amount of fees.

According to the Legislature, Article 12 cases have been pending in the Commonwealth for more than five years. Uncertainty over land titles has hurt the local economy.

"Landowners, investors, real estate companies and others need solutions that are fair, legally sound and equitable to all parties," Guerrero said in a message to the Legislature after signing PL 8-29. "This law is part of the solution to the land title question."

New provisions added to Article 12 bill

By DAN PHILLIPS
Daily News Staff

Two new sections have been added to Senate Bill 8-124, which would provide guidelines for the legal enforcement of Article 12 of the Commonwealth Constitution.

Yesterday's House public hearing was expected to be the last hurdle for the bill, which has widespread support and is being pushed hard by lobbyists who want the bill enacted before the November general election.

Lawsuits alleging violations of Article 12, which restricts ownership of commonwealth land to people of Northern Marianas descent, have been blamed for weakening the commonwealth's economy.

The bill provides that if a corporation is found to have illegally purchased land, the titles to any land bought by the corporation would revert to the corporation's shareholders who are of Northern Marianas descent.

The bill addresses several areas of controversy involved in the lawsuits, including:

■ Limiting the amount of fees any lawyer handling an Article 12-related case can charge. Gov. Larry I. Guerrero recently signed into law a bill that limits fees to $700 an hour, but the Senate bill would limit fees to 20 percent of the recovered land's value or $700 an hour, whichever is less.

■ Providing compensation to landowners and lessees who lose land or improvements due to a court's ruling that transactions involving the land violated Article 12.

The only time that equitable adjustment would not be in order is if fraud was committed in acquiring the land.

■ Defining under what circumstances a "resulting trust" would be created. The provision would further strengthen a recent decision by the U.S. Ninth Circuit Court of Appeals, which overturned a ruling by the Commonwealth Supreme Court.

The resulting trust provision of the bill dictates that a resulting trust cannot arise in favor of the person who paid the purchase price to buy the land. This means that if a person of non-Northern Marianas descent supplies the money to buy land to a person of Northern Marianas descent, there can be no conclusion that because the former supplied the money he or she owns the land.

■ Setting a statute of limitations for the filing of Article 12-based lawsuits. This section would require a landowner with an Article 12-based claim to file suit within six years of the alleged violation. Otherwise, the suit would be barred.

The existing limit is 20 years.

The bill would also provide a grace period of six months for the filing of lawsuits before the new statute of limitations takes effect.

■ Establishing guidelines for handling findings of Article 12 violations by corporations. This section, added by the House, provides that if the requirements set forth in the Commonwealth Constitution are met with regard to land ownership by corporations then a corporation is eligible to own land.

"No additional criteria shall be considered," the bill dictates. This language would seemingly shut the door on lawsuits that allege that corporations were set up to meet the legal definition, but were actually "shams" set up and controlled by people not of Northern Marianas descent who wanted to buy and sell land without the restraints of Article 12.

The only challenges to a corporation's true organizational status could be brought by creditors of the corporation in connection with a land transaction according to the bill.

In addition, the bill provides that if a corporation is found to have illegally purchased land the titles to any land bought by the corporation would revert to the corporation's shareholders who are of Northern Marianas descent.

■ Making sure that courts consider land transaction contracts to see if any sections of the contract are still enforceable despite a finding of an Article 12 violation.

Focus
10/1/93

Jr's Agenda

by John DelRosario

During the economic boom of the last decade, lawyers in concert with real estate brokers, became what I term the "Architects of Circumvention" or in plain language "Evil Geniuses" of Article XII. Millions of dollars were made by this group. It isn't that they became rich that I find bothersome. Rather, it is the scheme which they came up with defrauding people of their land and lifetime savings every which way you can imagine.

In other words, the evil geniuses embarked on a clever scheme involving the purchase of indigenous land. May I illustrate a point: Roger Gridley, a former MHS teacher who went into the real-estate brokering business purchased a piece of property from an old man. Knowing that he is prohibited by law from owning land here, he established a front company known as Realty Trust and deposited the title to the land in this company.

Subsequently, this piece of property was sold to Chuck Jordan who in turn deposited the title of the property under another front company known as Bonita Vista Properties Ltd. The nervous fun ride started from the original land transaction with Gridley. Well meaning people (locals and non-locals) purchased land from Bonita Vista Properties when the CNMI Supreme Court decided—in similar land deal—that the original land transaction was illegal from the very beginning.

The appropriate query in this case is: Who victimized who? Was it the late Tun Anselmo Iglesias the original land owner? Or was it Gridley and Jordan who knew that their scheme will someday blow up in their faces? I would have to say it is the latter. It is a risk and too great a risk and scheme so undertaken with full knowledge that their transaction is in complete violation of the intent and purpose of Article XII. The next obvious question that victims must ask themselves is: Who did you deal with in terms of sinking your investments in these properties? The late Iglesias or Jordan? If it is the latter then it is all too clear that the person you must sue is Bonita Vista Properties!

Why Bonita Vista Properties? You must force this company to protect and make good of its sale of property to you the buyer. Let Bonita Vista Properties sue the day lights out of Realty Trust for failing to ensure that the property it has sold is legal. These fraudulent transactions are responsible for all that have gone wrong with land schemes cleverly designed to circumvent the purposes and intent of Article XII. Unfortunately, it has blown up into the face of the very people who served as evil architects of circumvention. Guess this is where I find truth to an old adage "money is the root of all evil". How true in the instance case that money corrupts, right?

It is interesting too that Duty Free Shoppers has put together a documentary titled "Victims of Article XII". May I ask once more whether in fact the people who purchased land from Bonita Vista Properties Ltd. are in fact victims of Article XII or were they victims of a fraudulent scheme conceived and born by both Bonita Vista Properties and Realty Trust? I sympathize with some of my friends who detrimentally relied upon the words of Bonita Vista Properties to which you sank your lifetime savings. Your alternative and solution? File a lawsuit against the company as one buyer did to retrieve her investments. It is the only route you now have to secure your money. To vent your frustrations by barking up the wrong tree isn't going to get you anywhere.

The issue has now been brought to the legislature for disposition. While the legislature claims to have every right to legislate on issues of public interests, I seriously doubt that it (legislature) has the authority to amend court decisions, the Constitution and the Covenant. Only the people, gentlemen, can amend the purposes and intent of Article XII, no more, no less. Mind you, under a republican form of government only the courts are permitted to interpret laws that you, in conjunction with the executive branch have seen fit to approve. In other words, leave legal interpretation of laws to the courts. That's where it belongs so leave it be!

I can understand and appreciate the pressure cooker situation that you're in today. We have a very vocal group of lobbyists (SMART) asking that you glorify the fraudulent concoction of a group of attorneys and real estate brokers who made their millions and have quietly exited the Saipan International Airport in search of another Bermuda. If you're worried by the two-thousand-some lobbyists knocking on your doors, may I ask that you equally consider the silent majority who are watching your every step on this issue. They too deserve your attention and sound judgement as public servants.

I will expose the role of other companies who have seen fit to wave a paper tiger at our face, including the voluntary infusion of funds to defray costs of bringing in "experts" or "authorities" on the now infamous concept known as resulting trust, etc. Believe me I have found the real experts in this case: IT IS US! Evidently, the termination of the trusteeship agreement came into effect in 1986. Therefore, there's still 18 more years to go before we decide the fate of Article XII.

Marianas Variety 10/1/93

EDITORIAL

How fair is fair

YESTERDAY, a whole throng of so-called Article 12 activists trooped to the Legislature to once again register their sentiments on the Senate bill to correct the inequities of the present law on land ownership in the Commonwealth.

True, Senate Bill 8-124 is an idea that has come of age, owing to the panic that goes with the economic uncertainties created by the controversial land alienation provision.

What better way to counter the negative publicity the CNMI is getting from the outside investment world than with all of the brightest heads in both government and private sector coming up with a solution fair to both the foreign investor and the indigenous land-owning class.

The bill is meant to address fairness as it tries to counter the common nature of man trying to get more than what is rightfully his.

It provides for just compensation for any developer that loses his investment at the same time that he loses his right to stay in the disputed real property.

With such a provision, local landowners will think twice before suing for the land he had already sold.

The six year statute of limitation also strengthens the fairness aspect of Article 12 since it limits the period within which greed may come into play.

But come to think of it, the intent of Article 12 goes beyond just the issue of fairness. It deals with a sacred hedge enjoyed by the local population over foreign powers who may come in and capitalize on the indigenous residents' inadequacies.

The average Chamolinian may tend to think, there is already fairness in Article 12 as is. Foreign developers have the money, technological expertise and business acumen to make more money. But they do not have the land.

The local person may not be as sharp nor has he the finances, but he has one thing going his way - he can own land.

In this regard, a most equitable exchange of assets take place, with both sides benefiting. The developer shedding money to use the local person's land.

The question now is why would the proponents of the Senate bill want to alter that give and take relationship.

Given that either side may go astray and try to breakaway from good faith, would there be no other way to ensure fairness is maintained.

If the proposed bill is enacted and the complexion of Article 12 is altered, what guarantee can the CNMI have that investors who are supposedly adopting a wait-and-see attitude would indeed come in and invest.

How would leaders feel if the foundation of the Article 12 restriction is weakened through the bill and still the investor goes to other places due to a perceived instability of some local policies.

Or if such investors outrightly opts not to invest at all due to the global economic downturn that has affected even the US and Japan.

The CNMI resident will be left empty-handed.

No investment. Weakened protection for the indigenous population on land ownership.

Worse, foreign developers may become even bolder in trying to circumvent the land alienation provision considering that a new law have been worked out in their favor.

In this "dog eats dog," ruthlessly cold world of business, where all that matters is making money, that occurrence is not far fetched.

We share in the concerns of the indigenous people with regards to this issue.

The most appropriate way is to leave Article 12 untouched and just let the developer watch his step and not try anything foolish like going around such restriction.

Needless to say, the local landowner should also shape up and renounce greed as soon as he feels it in his system.

That way he would deserve the protection given him by the Constitution.

Saipan Tribune 9/24/98

SMART lobbies for passage of yet another Article 12 bill

MEMBERS of the group, Saipanese Mobilized on Article 12 (SMART), this week lobbied for passage of a bill aimed at allowing developers who lose investment due to the land alienation clause, to seek compensation.

Senate Bill 8-124, introduced by Sen. Paul Manglona, was passed by the upper house last month and is now before the House of Representatives.

The measure also puts a cap on contingency fees attorneys can receive under Article 12-related cases and provides for a statute of limitations to file such cases. Article 12 limits land ownership in the CNMI to persons of NMI descent.

A landmark decision by the Commonwealth Supreme Court in 1991 led to a near-avalanche of similar lawsuits, in which local landowners, claiming Article 12 violations, sought the return of their lands. Scores of litigation remain in the local courts.

Mary Aldan-Pierce, a defendant in the landmark case, was one of the members of the group who lobbied Wednesday for the bill's passage.

News of the lawsuits have had a negative impact on the local economy and is blamed as a major reason for the economic slowdown. Business leaders and other supporters of the Senate bill say its passage will go a long way in easing investors' fears that the Commonwealth is an unsafe place to invest.

"We support the Senate bill because it will comprehensively address concerns and problems with Article 12. We feel it is important to do something now. If we wait until after the election, we may have new lawmakers unfamiliar with Article problems and we will have to re-educate a whole bunch of new legislators," Aldan-Pierce.

Also in the group was Lucy Nielsen, who faces losing land near Mt. Tapochau she said she acquired in good faith. Nielsen's case is before the court.

"We support the intent of Article (to restrict land ownership to the indigenous people) but some of these lawsuits are being initiated out of sheer greed," Nielsen said.

Aldan-Pierce said the group met with at least six representatives, including the Speaker Thomas Villagomez and Vice Speaker Diego Benavente, who said they will support the bill during its floor vote.

Rep. Heinz Hofschneider, when asked for support, said he would take it a step further by providing language seeking stiffer penalties for attorneys who are found to be fraudulently engaging in Article 12 litigation. He said he would amend the bill to include grounds for disbarring an "attorney who willingly violates the provision of the bill."

Aldan-Pierce added that her entourage also visited Gov. Larry Guerrero, who assured the group he will sign the bill once he receives it from the Legislature. Guerrero has said he will sign a House bill limiting contingency fees for attorneys prosecuting Article 12 cases. That measure has already been transmitted to him.

About 1,700 people have signed the SMART petition urging passage of "Article-12 remedy" legislation, according to Aldan-Pierce.

Variety 9/24/93

Jr's Agenda

by John DelRosario

From Cooperation to Litigation: Much has been litigated, debated and published about Article XII which limits land ownership to the indigenous people here. The 9th Circuit Court of Appeals has knocked down the misapplication of the so-called "resulting trust" in some lawsuits. But it left the intent of Article XII fully intact—land ownership remains with the local people.

Recently, we have seen the emergence of the SMART Group who sees fit to leverage its own interest against lawmakers up for re-election regardless of the consequences. This move, in my view, is both selfish and unfair given the fact that a lot is at stake if this issue is mishandled by politicians succumbing to pressure from any and all special interest groups.

Subsection (a) of Section 806 of the Covenant Agreement says that we can subsequently regulate permanent and long-term interests in real property 25 years after termination of the Trusteeship Agreement. If in fact termination of the trusteeship came into effect in 1981, then there's still 12 more years to go before the people (emphasis added) may decide to either kill it altogether, amend or keep it intact. It would seem to this scribe, therefore, that the best that anyone could do at this juncture is live with it.

It brings into focus whether the legislation now under review before the legislature is the appropriate course of action, or is it a tool of convenience to relief attorneys who helped mess this issue beyond decency? Would the intended legislation withstand court scrutiny given the fact that it is both meddlesome and intrusive of the original intent of land ownership so provided by both documents? Would its approval constitute an amendment to both pertinent Covenant and Constitutional provisions and does the legislature have the authority to amend either or both documents?

As much as I sympathize with those who claim ignorance of the law or have been victimized by the lack of clear cut provisions governing restitution or what have you, I question whether in fact you were and still are ignorant of both Covenant and Constitutional provisions. Are you sure your attorneys misread the spirit and intent of subsection (a) of Section 806 which says that we can only do something about it 25 years after termination of the trusteeship agreement?

I am also saddened to see a cultural transition from one of pragmatic resolution of problems—Pacific Way—to that of a very litigious society—the Western Way. I suppose this transition is inevitable given the increase in the number of lawyers who are, for the most part, responsible for all that have gone wrong with the Land Alienation provision.

I am also troubled by the question of relevancy of Article XII or Section 806 of the Covenant Agreement. In other words, if I could sell my land to a Mr. Kim for $1,000 per square meter, why should this provision limit my opportunities by selling it to a rich local who could only afford $40 per square meter? Isn't this part of the fallacy of this provision? I mean, if the provision is intended to see that my land remains in my hands, what good is it if it isn't mine any longer by selling it to a "we few" rich locals? I lose my land anyway, right? Why then the economic deprivation? It's fodder for you and I to play tug of war with for quite some time to come.

It boggles the mind however that half-cocked attorneys have used locals in the direct purchase of land chancing not only their clients' investments (or theirs for that matter) but the economic well-being of the CNMI? Have they done something to right their apparent misrepresentation of the true intent of the land alienation provision under the Covenant? Are the costs being shouldered by your clients or you yourself? If it is the former, are you saying there's no mal-practice or misrepresentation on your part?

I see that the proposed legislation is your easiest solution to glorify your purposeful and wrongful circumvention of the Covenant and Constitution of the CNMI? You got your millions then watch our people fight interminable feuds, right? I despise the legal architects of these land deals which have resulted in family feuds outside our television screen, disunity and the cultural transition from one of peace and cooperation to that of strife and litigation. Why can't legal eagles speak the honest truth for once in their lifetime? No wonder lawyers are the only ones making money even during a global recession.

I wish to beg our lawmakers and the SMART Group to consider this issue with great caution in that I am one firm believer in an old Chamorro saying: "Todos ma afuetsas ti mauleg." In other words, anything that is forced just doesn't yield anything good at all. For instance, a mango that ripens in its natural way tastes sweeter than the one where potassium nitrate is used. Thanks and let's not sacrifice nor deny the unborn Chamolinians their rights to land ownership. They deserve protection and it is our responsibility to stand guard on their behalf.

House readies for Article 12

■ **Bill:** Legislators expected to vote on land legislation; must go back to Senate for further consideration

By DAN PHILLIPS
Daily News Staff

Legislation that would attempt to offer legal guidelines for the enforcement of Article 12 of the Commonwealth Constitution is likely to be approved at the next House session, which could come today.

Several amendments have been made to Senate Bill 8-124, however, so the measure will head back to the Senate for consideration.

A special House committee formed to review the bill held a public hearing on Sept. 30, then considered the testimony offered at that hearing and made several amendments to the bill.

The amendments are included in the committee's report, which was completed last day but only made available this week.

The committee recommended passage of the bill, finding that there "is a compelling need for the Legislature to issue guidelines clarifying Article 12 so as to promote greater

Article 12 restricts ownership and long-term interests in commonwealth land to people of Northern Marianas descent.

A number of lawsuits, alleging that people of Northern Marianas descent were used as fronts by outside investors who actually controlled the land, and thus violated Article 12, have been blamed for dampening the commonwealth's economy.

Although most of the issues contained in the bill have yet to be addressed by the courts, an uncertain future has the defendants in those cases anxious and actively campaigning for the proposed legislation, which is almost certain to be tested in court.

The Senate's bill would clarify the conditions under which a "resulting trust" could take place; limit the possible legal fees in Article 12-related cases; provide compensation to landholders who lose in Article 12-based lawsuits; and create a statute of limitations for the filing of Article 12-based cases.

The House has proposed several amendments to the Senate bill, including setting forth guidelines for the enforcement of Article 12-based cases involving alleged violations by corporations.

After the public hearing, the special committee made several changes to the bill, including:

■ Clarifying that the limitations on the amount of money lawyers can charge only apply to "legal proceedings, transactions and cases arising under Article 12."

The bill also would replace a recently enacted law regarding attorneys' fees in Article 12-based cases with new guidelines and limits.

■ Providing that the six-year statute of limitations to be applied to Article 12-based cases not apply in cases where "fraudulent concealment" is clear.

The committee decided that although it is important to ensure security in land titles, it also believes that "a defendant ought not to be permitted to take advantage of his own wrong and to sustain a defense which in good conscience he ought not be permitted to avail himself."

■ Making it clear that disputes over whether a corporation was eligible to own land will be confined to whether the corporation met the plain language of Article 12, section 5.

"There shall be no further inquiry into the internal operations of a qualifying corporation in order to 'pierce the corporate veil,' or to determine equitable ownership, control or interest, or to prove a corporation a 'sham'," the committee said.

■ Raising the standard of proof in cases alleging Article 12 violations by a corporation, from "preponderance of the evidence," to

❑ See ARTICLE 12, Page 4

Article 12: Bill goes to House floor

❑ Continued from Page 1

"clear and convincing proof."

The committee found that the drastic punishment prescribed for Article 12 violations (loss of the land) justified the higher standard.

■ Deleting a section that stated that corporations found guilty of violating Article 12 would lose the land in question to the corporations' shareholders of Northern Marianas descent.

The committee found that this section would have violated Article 12, which requires that land acquired by a corporation not qualified to own land be forfeited to the government.

■ Providing the court the authority to "sever any provision of an agreement which violates Article 12, as long as the rest of the agreement can be upheld without unjustly enriching or prejudicing either party."

Rep. Stanley T. Torres, Diego T. Benavente, Jesus P. Mafnas and Francisco D.L.G. Camacho signed the committee report, while Rep. Herman T. Guerrero

Diamond Hotel raises Article 12 case

Decision could stake out whole new terrain of legal wrangling

By DAN PHILLIPS
Daily News Staff

Hundreds of land lease agreements in the Northern Marianas could be affected by the decision in a lawsuit involving the Saipan Diamond Hotel and Article 12 of the Commonwealth Constitution.

The suit, which questions the legality of what is known as a change of law provision, is now before the Commonwealth Supreme Court after Superior Court Presiding Judge Alex C. Castro decided that the provision violated Article 12.

Article 12 restricts ownership and leasehold interests exceeding 55 years in commonwealth land to people of Northern Marianas descent.

At issue in the Diamond Hotel case is a 1986 lease agreement between Manases B. Matsunaga and the hotel, which provided for a legal 55-year lease.

In addition, the lease provided that, if the law should be changed to allow Diamond Hotel to hold an interest of more than 55 years, a 35-year extension of the lease would be made available.

After Manases Matsunaga died in 1990, his sister, Elizabeth L. Matsunaga, raised the issue of a possible Article 12 violation during probate proceedings.

Concerned about protecting its rights, Diamond Hotel filed the suit in April 1992 in an effort to get a declaration from the court regarding the lease's validity.

The land in dispute is not part of the hotel, but rather a nearby piece of property that was being considered as a possible employee housing site.

Castro ruled in favor of Matsunaga in an order he issued on March 31 of this year. The two-page order did not analyze the issues raised by John T. Lizama on behalf of the Diamond Hotel.

"There is no dispute that the lease was fairly and honestly made. At issue in this case is a single provision that would allow the Diamond Hotel the option to extend the lease by up to 35 years if and only if there is a change in commonwealth law which would allow that option to arise," Lizama argued in his brief to the CNMI Supreme Court.

Even if the court should find that the provision did violate Article 12, it should cut out that provision and leave the lease intact due to "public policy considerations."

"As a matter of public policy specific to Article 12 cases, the court should uphold leases where the parties' mutual intent is clear," he said.

Robert W. Jones, the lawyer for Matsunaga, argued that the "change of law" provision gives the Diamond Hotel an interest beyond 55 years and interferes with Matsunaga's land use rights.

He also called for the court to establish a "bright-line test for analysis in Article 12 cases," and adopt "a clear standard that cannot be misinterpreted by anybody."

The Carlsmith law firm, which represents the defendants in most of the pending Article 12-based cases, has been granted the opportunity to file a brief with the CNMI Supreme Court as a "friend of the court."

Representing the Hotel Association of the Northern Mariana Islands and the Saipan Bankers Association, John F. Biehl of the Carlsmith firm urged the court to consider the right of people to "not be deprived of property without due process of law."

"This court should proceed with utmost caution and balance in this case because its decision will have a direct effect on hundreds of leases involving millions of square meters of land and many millions of dollars," Biehl said.

The change of law provision, he said, "should not be construed as an interest in real property."

The case, Biehl said, "presents this court with the opportunity to help restore confidence in the commonwealth as a place where it is safe to conduct business."

Focus 10/8/93

Letters to the Editor

Talking about greed, which one. . .

Dear Editor,

The video currently being aired on cable television entitled "The Article 12 Crisis: At what cost?" presents a very uneven view of Saipan's recent history.

The video idealizes the growth explosion of the late 1980s and treats the recent slowdown as a tragedy.

The stars of the show: Realtors, developers, contractors and politicians, never mention the effects of rapid development on culture, environment or quality of life for the average citizen of Saipan.

During the supposedly great years of the 1980s, raw sewage was being dumped in the lagoon, the dump became a monstrosity, Micro Beach became unswimmable, use of the drug "ice" became intolerable and crime increased. From this point of view the slowdown can be seen as a chance for Saipan residents to catch their breaths and evaluate whether the rapid pace of development has bee good.

The video talks about the greed of local people who use Article 12 to cancel land deals. It does not mention the greed of real estate brokers and lawyers who made millions by getting around Article 12's intentions by using middle men instead of just leasing directly from landowners, nor does it mention the greed of people who leased land at low prices from aged or uneducated local people and turned around to get huge profits by subleasing it to others. This greed also played a big part in the Article 12 crisis."

The video shows only a point of view that sees the Marianas as a tool for profit. This point of view cares everything about money and nothing about the social effect of skyrocketing development on environment, culture and families.

Now, that's greed.

/s/Victoria King Taitano
/s/Francisco I. Taitano
/s/Lauri Bennet Ogumoro

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Micronesia's Leading Newspaper Since 1972

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House report on S.B. 8-124 out soon

THE SPECIAL committee of the House of Representatives working on Senate Bill 8-124 is now circulating its report among its members, this was learned yesterday.

The panel, which was created by House Speaker Thomas P. Villagomez to review the controversial bill aiming to address problems with Article 12 of the Constitution, is recommending its passage in an amended version.

It may be up for House action in a session soon.

"We have finished the draft report and are now giving our members the time to go over the bill to see if there would be other recommendations. As of present there has been two signatures on the report, both endorsing the bill's passage," said Rep. Stanley T. Torres, chairman of the committee, in an interview yesterday.

He did not reveal the names of those members who have signed the draft report, opting to hold back until the majority have affixed their signatures on the document.

He also declined comment on any details of the report aside from saying the recommendation will be the bill's passage with revisions.

Members of the special panel were, Vice Speaker Diego T. Benavente (vice chairman), and Reps. Francisco DLG. Camacho, Jesus P. Mafnas and Herman T. Guerrero.

There was no indication yet as to the final course of action on the bill, whether for or against. But will be reported out to the f House for action soon.

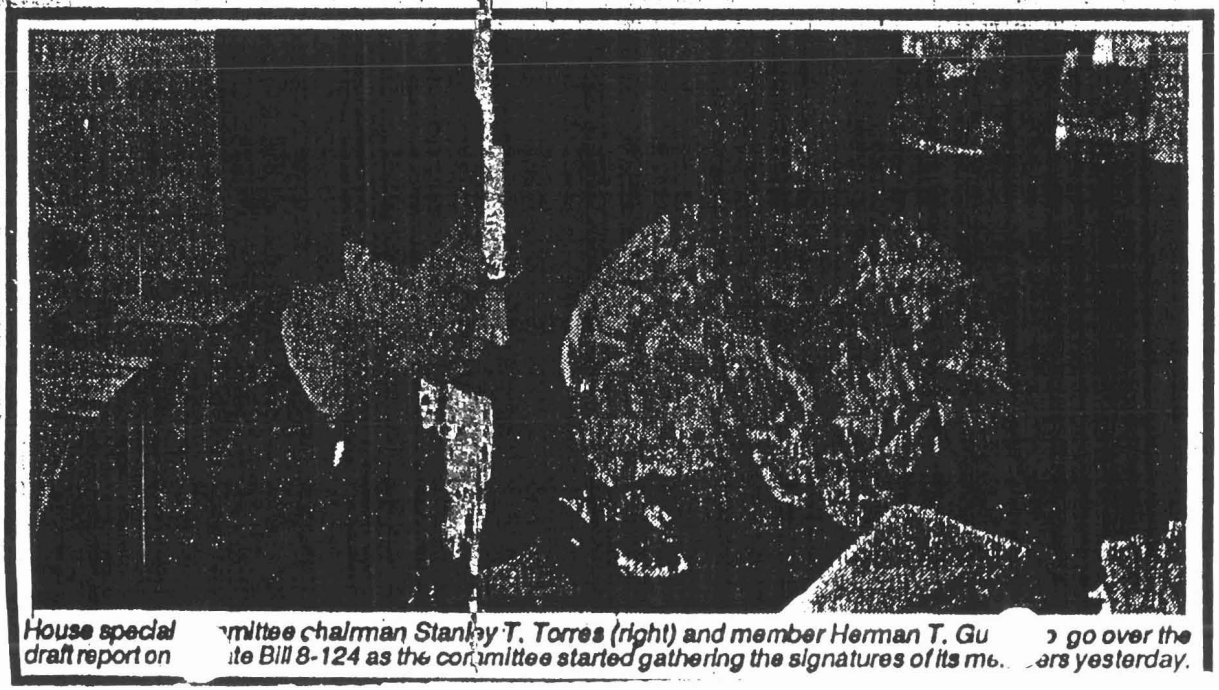
Senate Bill 8-124, which w introduced by Senator Paul Manglona may perhaps be one the most scrutinized legislati ever for the Eighth Legislature

It underwent three public hea ings - two for the Senate and o for the House. All of them we jampacked.

The bill is being ballyhooed be the answer to current unce tainties created by recent cou interpretations of the land alie ation provision of the Constitu tion and is seen as one that woul bring fairness to the CNMI lan system.

Other Article 12 activists, o the other hand, want Article 12 t

continued on page 2



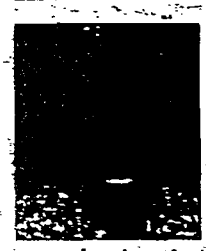
House special committee chairman Stanley T. Torres (right) and member Herman T. Gu go over the draft report on ite Bill 8-124 as the committee started gathering the signatures of its me ers yesterday.

CNMI team takes top honors in Guam tae y

HOTSHOTS

How has Article XII of the Commonwealth of the Northern Mariana Islands constitution, which prevents foreign ownership and long-term lease of land, affected your business, and how do you think ensuing lawsuits best can be resolved?

Clarence T. Tenorio
President
Joeten Enterprises Inc.



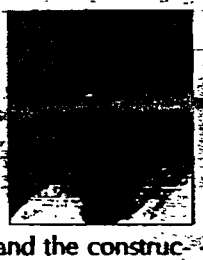
I hope that the parties settle, rather than the attorneys continuing to fight. If they cannot settle, then let the courts decide. We will support the decision of the courts.

I think that the silent majority believes the courts should decide on the best solution. They believe in the integrity of our courts and think that they are competent. Whatever decision they make, win or lose, they will accept it and go on with their business.

It's disappointing that the media try deliberately to interview only those people adversely affected, but the silent majority are the people and businesses who will be here long after the outside investors have gone. They see a lot of good in land-alienation restrictions.

A lot of people agree that Article XII is good. But those adversely affected say that the judicial interpretation is wrong and has caused problems. I prefer to let the judicial process find the best solution. Let the courts decide. That is their responsibility.

John H. Price
Vice President
Kaiser Cement Corporation of Guam



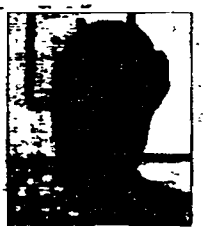
Our business is obviously tied to the construction industry, and the construction industry has been adversely affected by Article XII. More specifically, the legal maneuvering that has been created from the haggling over this article has put off developers from investing any further because it appears that a deal is not a deal in the commonwealth.

If developers aren't building hotels, condominiums or apartments, there isn't much need for cement, and there is not much need for cement in the commonwealth today. Nor is there any need for the jobs necessary for construction, or the taxes those jobs pay.

The intent of Article XII is to preserve the land for the indigenous people of the Northern Mariana Islands. That has not been violated. It is the transaction that is being questioned. Now that the developed property has increased in value, some original landowners want it back or, more likely, greater compensation.

Perhaps the people of the Northern Marianas need to ask themselves if they are better or worse off with the development. If they are better off today with the development, then they need to let their elected officials know, and changes need to be made. If they feel worse off for the development, they don't need to do anything.

Christopher K. Felix
President
Century 21 Realty Management Co.



My business is a real estate brokerage and property management company on Guam. My company has been in business since 1980, and prior to that I was the manager of a company offering similar services. Saipan's property restrictions have always benefited my business. Here on Guam, properties can be purchased in fee simple or leased for up to 99 years. This gave us an advantage over Saipan, which can offer only up to 55-year leasehold properties to non-Saipanese or Carolinians. However, even with this restriction, Saipan property values skyrocketed until the Japan economy fell in 1989. The recent lawsuits and rulings have hurt land values and Saipan's credibility even more.

The recent lawsuits and rulings actually have helped the real estate market on Guam. Investors no longer are looking at Saipan with the enthusiasm they once did. Instead, the few investors left are looking to invest on Guam. I believe the lawsuits should be settled quickly and in the favor of the developers. If this is not done, I believe Saipan will suffer a tremendous crash in real estate values and developments. This in turn will seriously hurt the economy. It is private businesses and developments that stimulate economic growth. Without these, any country's economy will collapse.

Philip J. Flores
President and Chairman of the Board
Guam Savings and Loan Association

When Guam Savings and Loan Association announced it would be an aggressive real estate lender in the Commonwealth of the Northern Mariana Islands, we were warned by other lenders doing business on Saipan not to do so and that Article XII made it virtualy impossible to lend on real property. We do not agree. We are making real estate loans actively.

But the current litigation involving Article XII and the resultant controversy are harmful to the people and economy of the commonwealth. Article XII is a wise part of the commonwealth constitution. Abuse of Article XII protection, however, is as bad a thing as can happen to the commonwealth.

Lawsuits voiding or threatening to void investments made in good faith with no intention of breaking the law destroy future major investment in the commonwealth. If there is an occasion when there is a purposeful circumvention of the law, void the transaction, but do not punish the innocent.

There exists a perception that the ongoing and threatened suits involving Article XII are power plays based upon greed. Whether this be true or not, the perception is more important than the reality.

Appropriate means must be taken to clarify the intent of Article XII and prohibit the possible abuse of Article XII. The Article XII controversy must be resolved soon.

And not at the Mogambo.

PACIFIC STAR
The People's Newspaper

VOL. I NO. 4 OCTOBER 1, 1993 50 ¢

NMI may turn away tourists

THE OPENING of the new airport in Osaka, Japan next year will mean more visitors to the Northern Marianas but delays in the construction of additional hotel rooms may force the CNMI to turn away tourists, according to David M. Sablan, member of the board of directors of Marianas Visitors Bureau.

Sablan made the statement as he urged the Legislature to pass Senate Bill 8-124, which is expected to minimize land cases involving Article 12 of the Constitution.

The bill allows developers to recover investments on the land when they lose the so-called Article 12 cases. It also provides for a six-year period (after the transaction) for filing of land claims.

Article 12 allows only persons of Northern Marianas descent to own land in the Commonwealth. About 20 cases have been filed in the local courts as landowners try to take back their properties after these were sold to other persons of Northern Marianas descent who, in turn, leased the properties to other people or corporations not eligible to own land or hold long-term interest (beyond 55 years).

In many cases the money used to buy the land was provided by the ultimate tenant, although title remains in the local buyer's name.

In his oral testimony before a special House committee, Sablan said the CNMI has 2,800 hotel rooms at present and would need 400 new rooms next year.

On the other hand, Abel Olopai said new hotel rooms means more workers being brought in from other countries, who must also be provided with housing during their stay here.

Olopai said the Legislature

(Continued on page 2)

Jr's Agenda

by John DelRosario

Variety 10/15/93

I read with interest a letter in the Wednesday edition of this newspaper about the 20 per cent quota as it relates to the garment industry here. I must agree that the writer is correct in saying that the net result is far removed from the original intent of this specific provision. It is a fact that this industry had to import not only Micronesians to the island to meet this requirement of the law, but it must continue to bring in large numbers of workers from mainland China to fill the thousands of menial and meaningless jobs in its factories.

Not only has this industry brought us under the telescopic scrutiny of the US Congress for slavery practices, but it has drained the residents of these islands of water, power and sewer. It is because of this abrupt disruption in these services that we must genuflect before the US Congress for more money in order to try to meet the needs of our people. In its simplest form, we are telling mainland American taxpayers "please subsidize the additional burden placed upon these services by alien workers" because their presence have over burdened the system. Is this why we want this industry here?

For as long as this industry is here, we will continue to carry on a feud not only among ourselves but with members of the US Congress with respect to the application of the federal minimum wage here. In other words, we will continue deferment of this issue in order to protect the "we few" friends in the garment industry at the expense of our people. Most other industries here have no qualms paying more than $3.50 per hour. Reason? Their business ventures are economically sustainable which augurs well with an island setting.

I understand too that some garment factories here have included locals on their payroll who never physically worked for the company in order to meet their quota. What's even more interesting is that the workers or management would come around and receive these checks or half the amount saying that the rest is a "gift" from the company. I'd be interested to find out what happened to the tax rebates of these people? Specifically, I want to know who took them and whether in fact they have been accounted for? Interesting scheme, huh?

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When we take a retrospective view of the Boom of the 80s, it is obvious that Article XII was responsible for the development that came crashing in like huge tidal waves along our shores. Legal eagles and real estate brokers had to make their windfall profits in six digit numbers. Therefore, a scheme was designed to rob both the landowner and investors hoping then that nobody would catch up with them. Well, we have caught up with the enemy.

It is interesting though that those who were duped into taking a bad deal are accusing landowners of greed or that they (landowners) don't have an inkling of what a "deal" is all about. Well, I couldn't agree more with Ms. Vicky Taitano who asked that we probe where greed rested in this controversy—lawyers and real brokers who have made their millions and have fled the islands or the landowners?

In everything we do, there's the word responsibility. It is the responsibility of ALL NON-CNMI DESCENT to know that none of them can own title to land in the Marianas. Therefore, each must adhere to the letter and intent of Article XII. In other words, follow the law! It would seem logical too that anyone who buys a piece of property from Realty Trust and Bonita Vista Properties Limited must immediately question whether the deal the two realty companies secured is in fact legally good. Did any of you bother to investigate this issue before putting down your lifetime savings?

It is unfortunate too that one of Japan's biggest companies was involved in a land deal emanating from a bad deal in the first place. Did they know that such was void from the very beginning? I have a feeling that they knew what they were getting into. And it seems rather unfair for they now threaten to leave the island if they lose out on this case. It would seem to this scribe that the only way out now is for you, your real estate company and attorneys to converge in court and thrash out who screwed who so that restitution can be made accordingly. Our people didn't strike a bad deal with you. The bad deal was concluded between you, your real estate brokers and legal eagles. Each of them must be held responsible for this whole mess, no more, no less.

If you're a local who has been used as an agent and led to believe that when this deal expires the land is yours, never forget that this so-called "agency" is a very temporary thing. The real buyers of the land can always change you for another person as we have already seen. I am surprised that even former judges convinced themselves that this route would be appropriate. They end up believing the evil work of what I have termed the Architects of Circumvention! Did you realize, friends, that you can't find the title holder of the land you've purchased the properties from because the documents were parked at a dummy corporation because they know they can't hold title to these lands?

Finally, it is rather very discouraging that the legislature has seen fit to usurp the role of the third branch of government—the judiciary. If you have any inkling of the concept of a republican form of government, you will know that your action is in violation of the separation of powers. In other words, gentlemen, the authority to interpret laws rest solely with the courts. Your action is tantamount to a reinterpretation of the court's decision and the purposeful glorification of all the illegal land transactions here! Are you telling the silent majority that the actions of Realty Trust, Bonita Vista Properties and other realty companies are legally correct?

ive caught up with the enemy.
It is interesting though that those who were
transactions here! Are you telling the silent majority that the actions of Realty Trust, Bonita Vista Properties and other realty companies are legally correct?

Governor hints support for S.B. 8-124

By Rafael H. Arroyo

OVERNOR Larry I. Guerrero esterday indicated support for ie the pending Senate bill that ms to address current problems ith Article 12 of the CNMI Con-itution.

In a letter to Senate President uan S. Demapan and House peaker Thomas P. Villagomez, uerrero lauded the Legislature r coming up with Article 12 emedial measures but indicated reference for Senate Bill 8-124, ie one authored by Sen. Paul A. fangloña.

"I promised to support legisla-on to help restore developer confidence in the CNMI. I am encouraged by the efforts of those legislators who came up with corrective bills. Some of the proposed measures offer broader remedies than others," said the governor.

"I have been advised that S.B. 8-124 would be a good bill in that it addresses four problem areas," he added.

Only the other day, Guerrero signed into law House Bill 8-295, an Article 12 bill from the House which became Public Law 8-29.

The new law limits Article 12 lawyers to a maximum compensation of $700 per hour. It also prohibits contingency arrangements, where attorneys fees would be based on a percentage of the value of the land being recovered.

It was authored by Rep. Stanley T. Torres, with major amendments put in by Rep. Jesus P. Mafnas.

On the other hand, S.B. 8-124 addresses four controversial issues concerned with the interpretation of Article 12 issues.

Aside from also placing a cap on attorneys fees as in H.B. 8-295, it shortens the period within which Article 12 claims may be brought up by the original landowner versus the purchaser of the real estate property.

Aside from that, it does away with the resulting trust theory as applied by CNMI courts on Article 12 cases and provides restitution for those who lose their investments on a property that is reclaimed through Article 12.

Such a measure is still pending before the House.

Article 12 of the Constitution prohibits persons not of Northern Marianas descent from owning land in the Commonwealth. This means the most foreign developers could hope for in terms of real estate interest is 55 years maximum.

Such a restriction had developers trying various ways on gaining long term land interest, including the use of local dummies who pose as land buyers for them.

Because the Commonwealth Recorder's Office has no means to ascertain the source of the money used in any land transaction, the valid transactions could not be distinguished from those that violate the land alienation provision.

Such uncertainty has projected an image from investors that in the Commonwealth, a good faith land deal may not turn out to be a good faith land deal after all.

Guerrero, in his letter yesterday to the Legislature, noted there are indeed problems with Article 12.

He cited projections made by KPMG Peat Marwick that the loss of 3,442 hotel rooms occasioned by this crisis will mean a lost tax revenue of over $48.1 million over the next three years.

Also, over 1,795 government jobs are expected to be directly affected by the suspension of such construction.

"As you know, the security of land titles problem greatly hampers the CNMI economy. My commitment to correcting the land title problem is even stronger than earlier. However, if we are to forge tools for the task, they should be the best possible ones that can be made," said the governor.

Var. Variety 9/24/93

PACIFIC STAR
The People's Newspaper

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Borja still opposing SB 8-124

SENATE Bill 8-124 still contains a provision that tries to amend the Constitution, former Supreme Court Justice Jesus C. Borja said yesterday.

In an interview, Borja said that while he supports the intent of the bill, he is against its prov-isions that allow restitution even if there was clear violation of Article 12.

Article 12 restricts land ownership and long-term (bey-ond 55 years) interest to persons of Northern Marianas descent.

SB 8-124, as amended by a special committee chaired by Representative Stanley Torres, allows the court to grant com-pensation to persons who lose Article 12 lawsuits even if the land transactions were rendered void ab initio (void from the start).

Borja also opposed the bill's provisions that requires filing of Article 12 claims within six years after the land transaction. Exemption from the time limit is allowed only when fraud is involved.

Under the existing statute of limitations which runs up to 20 years, a person who is sick is exempted from the time limit, Borja said.

Instead of trying to amend the Constitution or restricting the right to file lawsuits, Borja said the government should consider creating an agency or a land court which will review all land transactions.

A stamp of approval from the proposed land court will mean that the transaction is valid, thereby assuring the safety of investments, Borja said.

Meanwhile, the committee which reviewed SB 8-124 said the Legislature "clearly has constitutional authority and responsibility to enact Article 12 enforcement laws and pro-cedures."

"Furthermore, the Special Committee finds a compelling need for the Legislature to issue guidelines clarifying Article 12 so as to promote greater confi-dence and security in land tran-sactions," the committee said in its report.

The committee said it conducted a public hearing on Sept. 30, during which 37 witnesses gave oral testimony. A total of 29 witnesses were in favor of the bill, seven were against and one was neutral.

The committee also said the amended bill provides that record proof of stock ownership and percentage of directors of North-ern

(Continued on page 15)

Borja...

(Continued from page 1)

Marianas descent should be conclusive as to which persons are directors or shareholders.

"There shall be no further inquiry into the internal oper-ations of a qualifying corporation in order to 'pierce the corporate veil,' or to determine equitable ownership, control of interest or to prove a corporation a 'sham,'" the committee said in its report.

The committee's report, which favors passage of the bill, will be taken up during today's session of the lower house, according to Speaker Thomas P. Villagomez.

Corporation is considered a person. . .

Dear Editor,

The agenda articles written by Mr. John Del Rosario, in the Oct. 1st and 15th issues of your newspaper, were so factually wrong and so distorted that they cannot be ignored.

Mr. Rosario asked his readers "Who victimized whom" in the land transaction between Mr. Anselmo Iglesias and Realty Trust. I am not writing to defend either Realty Trust or Bonita Vista but I would like to present several facts that would assist him and his readers draw their own conclusion to his question.

First, Realty and Bonita Vista were entities or persons of Northern Marianas Descent. Mr. Rosario, and numerous other people, failed to acknowledge that a corporation is, for many legal purposes considered "a person". In 1982 and 1983 when these corporations were buying and selling land, they were legal "persons of Northern Marianas descent" for corporate purposes as provided by the Constitution. The land they bought from local people and sold or leased to others, including myself, was legally bought and sold or leased based upon the law at that time. You may not like this, you may think it wrong, but your misunderstanding of what a corporation is or can do under CNMI law does not make their transactions illegal.

Second, regarding the transaction between Realty Trust and Mr. Anselmo Iglesias, God bless his soul, was perfectly legal. I wish to point out that it was he who sought our Realty Trust for the purpose of selling his land. The land had been unused for years and was barely accessible by four-wheel drive. He paid

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nothing for the land since it was an agriculture homestead. He sold this free land for $30,000.00 in early 1982. At that time, for that type of land, in that area was a great deal of money. And it was fair and legal. Realty Trust sold the same piece of land to Bonita Vista for $30,000. Mr. Iglesias was not defrauded and Realty Trust did not make millions from it. I paid about $4.00 a square meter later when I bought two of the lots subdivided from the original piece. Bonita Vista did not make huge profits on the sale of that particular piece of land but look at the profit Mr. Iglesias made for land that costs him nothing. Given the above facts, would you still say that Mr. Iglesias was cheated?

Did you know that the late Mr. Juan Cabrera, God bless his soul, also known as Juan Gora, offered to buy that same piece of land from Mr. Iglesias for the same price? He did. And do you know what Mr. Iglesias chose to do when he had the choice between selling to an indigenous person or selling to a "local" corporation, both legally entitled to own land under Article XII? Do you know? Mr. Iglesias chose Realty Trust. Why? I do not know. But that is what he did. It was his decision, not forced or by deception but rather made by his own free will. Where is the wrong here? And if there is wrong, then who was it? Realty Trust? Bonita Vista? I do not think so. Who victimized whom here?

When Mr. Iglesias sold his land to Realty Trust he signed a Warranty Deed. In that deed he promised to defend the title of the land he sold against all attack. He promised to honor the deed and defend it in return for $30,000.00, which he got. Who has sued whom? Realty Trust did not sue. Mr. Iglesias sued, thus breaking his word to honor the deal he made and the promises he made in the deed to protect and defend the right of Realty Trust to own the land. So who is the victim? Certainly not Mr. Iglesias. The victim is Realty Trust and the other victims are people who, in good faith, assumed Mr. Iglesias would honor his word, bought or leased portions of that land in later legal transactions. I am one of those victims.

Mr. Del Rosario, you said that the later buyers are at fault because they did nothing to question whether Realty Trust or Bonita Vista, a later buyer, could really legally buy or sell land here. You are wrong again. In my own case I checked with the Registrar of Corporation, I had a lawyer reviewed the corporation papers of both corporations, I knew Bernie Cabrera, who also happens to be my cousin, to be of Northern Marianas descent and I also knew who Ben Concepcion and Emi Palicans were, I did not need confirmation that these people have the right to own title of land in the CNMI. Did you know that a Title Search was done on Mr. Iglesias's land before I bought my two lots? The Title Search came out clean. Did you also know that Land Commission issued an original Certificate of Title to Realty Trust, then to Bonita Vista twice? Once for the land in its entirety and second for each of the lot after Bonita Vista subdivided the land previously owned by Mr. Iglesias? Yes, John, the document of all documents - the original Certificate of Title. Every detail was legally correct, all legal requirements were met by the corporations and in the transactions documents. There was not the slightest hint that anything was illegal. And, in fact nothing done was illegal.

But, I went one step further Mr. Del Rosario. I went to see the original owner, Mr. Iglesias himself to find out if everything was okay. I went with my sister-in-law. Yes, Mr. Iglesias confirmed he sold the land. He told me how much money he sold if for and how he used the money. He encouraged me to go ahead and buy the land and he assured me that I do not have to worry. So, John, I relied on legal documents filed and recorded with the Registrar of Corporation, I relied on the original document of Certificate of Titles, I relieD on the stockholders of Norther Marianas descents, and I relied on the words of Mr. Iglesias. I had a lot of respect for Mr. Iglesias, I still do. I had no reason to doubt him or to question his honesty. His words were sufficient for me. I relied upon his word, just as Realty Trust and Bonita Vista. Who then has tried to break the agreement? Not me, not Realty Trust, not Bonita Vista, not any other later owners or lessees. No it is the original seller, who got his money, who gave his word, who made a deal, and who now wants to break his word and the deal. We are the victims, not Mr. Iglesias or his family. It is me and my family that suffer.

I do not believe that this case belongs in court. I do not even believe that this case should be considered an Article XII case. By the way John, do you know that Mr. Iglesias told me that he will honor my deed but before he does that he wanted to get his lawyer's advise? His lawyer advised him not to do it and as a result, a man's word was broken and his honor and integrity is questioned.

If the right to hold title to land is denied some CNMI descent individuals or CNMI descent corporations, then, we have a very serious problem with our judicial system that would support such discrimination.

Let us be honest. I will tell you what the real problem is. The problem is prejudice towards non-Chamorros or Refalawasch who were part of the corporation as officers of the corporation. Roger Gridley was not Realty Trust. Realty Trust was a corporation for which Roger acted in compliance with the corporation charter and by-laws. He did not own land the corporation bought. The corporation, of which 51 percent was owned by indigenous stockholders, owned the property as provided by law. You may not like it, but such a corporation has the same legal right to own land as you do or I do. That was the law at that time. How John, tell me about victims, tell about who is greedy, tell me that these corporations did something wrong.

I am the victim of this prejudice you and others have against the non-Chamorros or Refalawasch who owned stocks within these corporations. And I am the victim of these misconceptions and prejudiced devised so subtly by Mr. Mitchell and a few others. I am a victim of prejudice. I did not do anything wrong or illegal. The fact is Mr. Iglesias is suing me. This lawsuit has put a massive financial burden on me and my husband to defend my land that we bought with our hard earned clean money. I am a victim because this lawsuit has continuously put a mental strain on me and my family and many of my friends. I am a victim because I could lose my land. My daughters are victims because they might not inherit this land that I intend to pass-on to them. I am a victim for acting sincerely, honestly and in good faith. Even you must now begin to see who it was that acted in bad faith. Think about it John.

Sincerely,

/s/Lucy Dlg. Nielsen

Re-Article 12. . .

Dear Editor:

The Pacific Daily News editorial labelled CNMI CITIZENS TRIUMPHANT (Oct. 18, 1993) betrays a complete lack of understanding of what has been happening in the Commonwealth Legislature with regard to the important land ownership protections of Article XII of the Commonwealth Constitution.

The PDN statement that the passage of Senate Bill 8-124 sends

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a message to investors that the Commonwealth is "a dependable place to do business" is dead wrong. Instead, the plain meaning of this special interest legislation is that international investors can freely violate the Commonwealth Constitution and then count on the Legislature to save them from the consequences of their own misconduct.

It means that a majority of the current Commonwealth Legislature has breached its obligation to uphold and defend the Commonwealth Constitution. I make this serious accusation knowing that those who voted for Senate Bill No. 8-124 were not lawyers and that the bill is legally complex and difficult to understand.

But they all know one thing: The purpose of the legislation was to obliterate the Supreme Court's interpretation of Article XII and to save Duty Free, Nikko Hotel and others who had violated Article XII and stood to suffer the sanctions intended by the framers, namely, loss of the fruits of their own misconduct.

Furthermore, the PDN is naive if it really thinks that SMART is a taro roots "civic action" movement. SMART is a smart move by Duty Free Shoppers, Ltd., the Carlsmith law firm (representing the Nikko Hotel), Larry Hillblom (represented by Joe Lifoifoi and Mike Dotts) and other defendants in pending Article XII cases to use a few local people to fight their multi-million dollar battle for them.

SMART reviles the Commonwealth Supreme Court for its faithful enforcement of Article XII and sets the Legislature against the Court and the best interests of all of the citizens of the Commonwealth - protection of Commonwealth land ownership in the hands of persons of Northern Marianas descent.

The real problem with what is happening here is that far too many of the international investors who were allowed to take an equal share of the economic life of the Commonwealth ar e now using their economic power to take by force that which Article XII denies them, namely, ownership of scare Commonwealth real estate.

Congressman Pedro R. Guerrero should be applauded for having the courage to speak his mind and vote his conscience, despite overwhelming opposition. He was right; they were wrong. Time will prove that to be the case.

Sincerely,

THEODORE R. MITCHELL

Note: The writer is attorney to the plaintiffs in a number of Article XII cases pending in the Commonwealth courts, including the Hotel Nikko Saipan case. He opposed the passage of S.B. No. 8-124

VARICTY NEWS
10/29/93

S.B. 8-124 gets Senate nod

Article 12 bill is only a signature away from becoming law

THE SENATE yesterday accepted the amendments put in by the House of Representatives on the controversial Senate bill that seeks to correct perceived problems with Article 12 of the CNMI Constitution.

Senate Bill 8-124, in an amended version, was unanimously passed through a vote of 7-0 during a session of the upper chamber yesterday. It now goes straight to the governor's desk for signature.

All senators but for Sen. Joseph S. Inos and excused absentee, Sen. Jesus R. Sablan were there to decide on the fate of the much-ballyhooed bill.

Members of the group called Saipan Mobilized on Article Twelve (SMART) were there to witness the passage of the bill.

Noted Article 12 attorney Theodore Mitchell had repeatedly stated opposition to the measure in that he feels it is unconstitutional and that it encroaches on the role of the Supreme Court.

The governor has lately supported the bill, indicating a possibility he would sign it when it gets to his table.

"This bill, which improved with the House amendments, will be good for the future of the CNMI. A lot of questions on Article 12 could be resolved such that investors will now be encouraged to come in without fear. This will means a good future for our children," said Sen. Juan S. Torres.

"Now people can welcome investors in, especially those adversely affected by the uncertainties of the Constitutional provision. Should there be problems, each one will have their day in court," said Sen. Paul A. Manglona, author of the bill.

Another senator, David M. Cing, had praises for the bill saying its passage has gone beyond the issue of politics.

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House OKs own version of S.B. 8-124

THE HOUSE of Representatives ast Friday passed on final read- ng the controversial Senate bill hat seeks to correct perceived problems with Article 12 of the CNMI Constitution.

Senate Bill 8-124, in an umended version, was passed dur- ng a Friday session, upon the ecommendation of a five-mem- er special committee.

The bill went through with 12 es votes, one conflict of interest nd one no vote. Rep. Antonio M. amacho was said to have turned the conflict of interest vote hile Rep. Pedro R. DL. Guerrero ist in the lone dissenting vote.

The measure now goes back to e Senate for either acceptance rejection of the House amend- ents.

The group called Saipan Mobilized on Article Twelve (SMART) pushed for the passage of the bill.

Noted Article 12 attorney Thoedore Mitchell had earlier testified that the bill is unconstitutional and that it encroaches on the role of the Supreme Court.

"The special committee finds that the Legislature clearly has constitutional authority and responsibility to enact Article 12 enforcement laws and procedures. Furthermore, we find a compelling need for the Legislature to issue guidelines clarifying Article 12 so as to promote greater confidence and security in land transactions," the committee said in its report endorsing passage of the measure.

The report was signed by committee chairman Stanley T. Torres, Vice Chairman Diego T. Benavente, and members Reps. Jesus P. Mafnas and Francisco DLG. Camacho. Another member, Herman T. Guerrero did not sign the report but turned in a proposed amendment that was defeated on the floor.

The bill, sponsored by Senator Paul A. Manglona may perhaps be one of the most scrutinized legislation ever for the Eighth Legislature. It took three jampacked public hearings - two for the Senate and one for the House to produce a final version that will aim to answer current uncertainties created by recent court interpretations of the land alienation provision of the Constitution.

S.B. 8-124 seeks to place a cap on contingency fees lawyers charge Article 12 litigants and shortens the period within which Article 12 claims may be brought up by the original landowner versus the purchaser of the real estate property except in cases of fraud.

Aside from that, it does away with the resulting trust theory as applied by CNMI courts on Article 12 cases and provides restitution for those who lose their investments on a property reclaimed through Article 12.

Article 12 of the Constitution prohibits persons not of Northern Marianas descent from owning land in the Commonwealth. This means the most foreign developers could hope for in terms of real estate interest is 55 years maximum.

Such a restriction had developers trying various ways on gaining long term land interest, including the use of local dummies who pose as land buyers for them.

Because the Commonwealth Recorder's Office has no means

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US Labor

Supreme Court nullifies Article XII controversy

By Flor B. Pamintuan

A decision that will nullify the existence of the controversy surrounding Article XII known as the Restrictions of Alienation of Land was handed down by the Supreme Court on Wednesday.

In a 1986 civil complaint filed by Diana C. Ferreira against Rosalia Mafnas Borja, Isidora Mafnas Salas, Feliza M. Babauta, Carmen M. Guerrero, William M. Borja, Jose M. Borja, Lina M. Borja and Patricia B. Robert, Chief Justice Jose C. Dela Cruz together with Justice Pedro M. Ada and Special Judge Edward King returned the judgment in favor of the plaintiff.

Ferreira appealed from a Trial Court order granting the defendants' motion for summary judgment. The matter was heard on remand from the Ninth Circuit Court of Appeals, to "reconsider the interpretation of resulting trust law."

According to the Supreme Court, they agree with the Ninth Circuit, in that because the purported transaction [illegible] accomplished had an illegal purpose, no resulting trust would have arisen in favor of third parties not of Northern Marianas descent.

"In light of our conclusions that neither the resulting trust doctrine nor agency principles may be applied to render Diana's transactions with the defendants unconstitutional, there is no occasion to consider the constitutionality of any agreements she may have had with non-NMDs not parties to this quiet title action," the order said.

"Based on the foregoing, we hereby reverse the court's grant of summary judgment against Diana in favor of defendants and remand this matter to the trial court with instructions to enter final judgment and decree quieting title in all three of the lots to Diana," the justices said.

Ferreira filed a complaint in 1986 to quiet title in three

Dela Cruz

parcels of land in the CNMI which she had purchased from the Borja family. Ferreira is a person of Northern Marianas descent who obtained financing for the land from persons not of Northern Marianas descent. In return for the financing, she entered into a partnership agreement with these persons in which she agreed to lease the land to partnership for 40 years.

Article XII of the CNMI Constitution restricts ownership of Commonwealth land to persons of NMI descent. At the time Ferreira entered into the agreement, Article XII permitted persons not of NMI descent to hold leases of up to 40 years. It has since been amended to allow leases of up to 55 years.

The Borjas contested her claim to title, arguing that their sale of the land to her was void because it violated Article XII by giving a permanent interest in CNMI land to persons not of Northern Marianas descent.

The Superior Court granted summary judgment in favor of the Borjas, holding that the land sale violated Article XII because Ferreira had bought the land as an agent for persons not of Northern Marianas descent.

On appeal, the CNMI Supreme Court affirmed but on different grounds. Applying the common law "resulting trust" doctrine, the CNMI Supreme Court ruled that Ferreira held the land trust for her non-Northern Marianas partners, who the

See Supreme, Page 20

Supreme...

From Page 9

Court said, were the true owners. The Court voided the sale and gave the land back to its original owners, the Borjas.

Ferreira contends that the CNMI Supreme Court's decision stripping her of title to the land violated both the equal protection and due process clauses of the Fourteenth Amendment. She claimed that the Court engaged in a legal sleight-of-hand to take the land away from her and return it to the Borjas.

At the Ninth Circuit, Special Judge Edward King agreed with Ferreira that the resulting trust doctrine had no applicability here. He argued that the proper test for whether a particular land sale violated Article XII is whether it gives an excessive long-term interest in the land to a non-Northern Marianas person.

Judge King said that courts should "scrutinize carefully any transactions entered into by a non-Northern Marianas person to determine whether the transaction would result in acquisition of a long-term interest by a non-Northern Marianas person, or in having the land pass out of the hands of the people of the CNMI".

The Court ruled that even if Ferreira and her partner did intend to create a resulting trust in favor of partners not of CNMI descent, their actions would not have created a resulting trust because the transactions would have an illegal purpose-avoidance of the land alienation restrictions of Article XII.

They said that the Commonwealth cannot constitutionally deprive a person of a proper interest through the expedient of an untenable judicial interpretation of local law that denies that a properly interest ever existed. The court thus vacated the judgment of the CNMI Supreme Court.

The decision which was passed by the Supreme Court agrees with the Ninth Circuit decision and in a separate judgment by Chief Justice Dela Cruz, he said that "all fee title and interest in the land at issue, legal and equitable is quieted in the name of the plaintiff, Diana C. Ferreira."

According to Theodore Mitchell, attorney for the defendant, the decision of the Supreme Court completely nullifies Article XII. "Because of this decision, they can go find any Chamorro, buy the land, sign the deed and the real owner can control the agreement," he said.

The idea of a US Labor compliance officer is one of the components of a bill that is pending with the US House of Representatives which seeks to eliminate the duty-free advantage given to CNMI exports to the US under Headnote 3(a) of the US Harmonized Tariff Code.

The bill, authored by Virginia Congressman Lewis F. Payne, indicates unless the CNMI raises the

He said what is needed here is cooperation between the business, labor and government sectors, otherwise no amount of federal presence here will solve the problem.

"What we need to have stability of the labor situation here are employees that are assertive of their rights; employers that respect such rights of their employees; and a government that ensures labor laws are being followed," said Torres.

House. . . continued from page 1

to ascertain the source of the money used in any land transaction, the valid transactions could not be distinguished from those that violate the land alienation provision.

Opponents of the measure believe the passing of the subject bill will erode the integrity of the intention of Article 12, place an undeserved economic burden on the innocent landowner and deter him from exercising a legal right.

Among the amendments entered by the committee is a repealer provision of Public Law 8-29 which places a cap on attorneys fees for Article 12 litigants.

However, the bill places a further cap on attorneys fees by restricting it to 20% of the recovery or $700 per hour, whichever is less.

The committee found such a provision provides protection to litigants beyond what is provided by P.L. 8-29, especially in the event the property is question is of small value.

On the statute of limitation, the committee amended the absolute bare on tolling by providing for an exception for an extension of the six year period by fraudulent concealment.

Another amendment put in was a severability clause subsection that will give effect to any existing severability provisions in an agreement where a particular contract term may violate Article 12.

This subsection intends that if a severability clause exists in the agreement, then the court not reach the second part of the analysis under subsection (a), but presume that the rest of the agreement can be enforced without unjust enrichment or prejudice to either party.

"The reason for this is that a severability clause is evidence that the parties intended that any void terms be severed, and therefore agreed to the results of such severance," read the report.

The amendment that kept the committee's main focus was on the section with regards to corporate entities involved with Article 12.

That section reads: Any corporation shall be considered eligible to acquire permanent and long term interests in real property in the Commonwealth if it met or meets the applicable four criteria set forth in section 5 of Article 12 of the Constitution at the time it acquired or acquires such interest.

The committee in its report found the original bill, which would have restricted evidence of corporate qualification to the public record, to be overreaching and potentially prejudicial to the rights of legitimate claimants.

"Once the finder of fact determines that a defendant corporation met the constitutional criteria at the time of the acquisition of the real property interest, that shall be conclusive of the corporation's constitutional qualification to have acquired permanent and long term interest in CNMI land.

There shall be no further inquiry into the internal operations of a qualifying corporation in order to 'pierce the corporation veil' or to determine equitable ownership, control or interest, or to prove a corporation a 'sham'," said the report. (RHA)

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Salary $2.35 - $3.00 per hour.
1 PRESIDENT - College grad., 2 yrs. experience. Salary $2,000 - $7,400 per hour.
1 DIRECTOR OF CONTROLLER - College grad., 2 yrs. experience. Salary $1,000 - $4,700 per hour.
Contact: HOTEL NIKKO SAIPAN, INC. dba HOTEL NIKKO SAIPAN, P.O. Box 5152 CHRB, Saipan, MP 96950 (11/1)M/06471.

1 MASON - High school grad., 2 yrs. experience. Salary $2.15 - $3.00 per hour.
Contact: BLACK MICRO CORPORATION, P.O. Box 545 CK, Saipan, MP 96950, Tel. No. 234-6880 (11/1)M/06475.

1 HEAVY EQUIPMENT OPERATOR - High school grad., 2 yrs. experience. Salary $3.00 per hour.
Contact: EAGLE CORPORATION, P.O. Box 3044 CK, Saipan, MP 96950, Tel. No. 235-4545 (11/1)M/013148.

1 CARPENTER, MAINTENANCE - High school grad., 2 yrs. experience. Salary $2.50 per hour.
Contact: MACHOMES (SAIPAN) CO. LTD., P.O. Box 2124, Saipan, MP 96950, Tel. No. 234-9100 (11/1)M/013149.

The Truth about Article XII and The Eight Legislature

We would like you to consider the following information when you vote for the candidate of your choice on Saturday:

1. Without Article XII of our Constitution, sooner or later, all of the private land in the Commonwealth could be under the ownership and control of others.

2. With Article XII, the very basis of our society and culture is protected for ourselves and future generations.

3. Every square meter of land that is purchased in violation of Article XII is a square meter that will not be available for future generations. Will Duty Free or Nikko Hotel ever give up title to their land; or sell it to any local person? NEVER!

4. The Framers at the First Constitutional Convention (with first-rate legal advice) did two things: (1) They put this vital protection into the Constitution where the politicians in the Legislature and the Executive could not touch it; and (2) They wrote Article XII in such a way that the Judiciary and only the Judiciary would have the power and responsibility to interpret and enforce Article XII.

5. The Framers in both 1975 and in 1985 intended that the courts and only the courts can interpret Article XII. They foresaw what could happen if these important rights were in the hands of the politicians.

6. The Eighth Legislature (and their not-so-SMART) advisers vilified and condemned our Supreme Court for its interpretation of Article XII. In fact, the Supreme Court did exactly what it is required to do under the Constitution: It interpreted and applied Article XII in a manner which is strictly faithful to the letter and the spirit of Article XII.

7. Don't forget, the Supreme Court is an independent branch of government which is beyond the reach of the politicians and the investors; the Supreme Court does not accept political contributions!

8. In fact, the members of the Supreme Court are fully competent, honest and responsible; they and the Court are worthy of respect and support.

9. Our Supreme Court doesn't need to be given "guidelines" by the Eighth Legislature (with not one single lawyer member). Article XII contains its own guidelines, right in the text of Article XII. Our judges don't have any problem reading and understanding it. They don't need the Eighth Legislature to tell them how to read Article XII.

10. The decisions of our Supreme Court on Article XII are part of Article XII; they are the constitutional law of our Commonwealth. The Eighth Legislature and all international investors should respect that law. Instead, the Eight Legislature makes a fool out of the Commonwealth. If you want to violate the law (any law!) just get the legislature to save you when you get caught.

11. Imagine where we would be now if the protection of our land had been put in a statute; the Eighth Legislature would have repealed it with Senate Bill No. 8-124, Public Law 8-32.

12. Don't believe the pious speeches of the member of the Eighth Legislature who voted for 8-124; they knew exactly what they were doing: obliterating Article XII for the benefit of Duty Free, Nikko Hotel, Larry Hillblom and the Carlsmith law firm and the other violators of Article XII.

13. Ask your senators and congressman how much money Duty Free, Hotel Nikko, Larry Hillblom and the others saved as a result of Public Law 8-32. The answer is HUNDREDS OF MILLIONS OF DOLLARS. What, if anything, did the legislators receive for the great gift they gave to Duty Free, Hotel Nikko, Larry Hillblom and the rest of the Article XII violators? Ask them!!!

14. Article XII, as interpreted by our Supreme Court did not hurt our economy. Everyone who watches CNN or reads the newspaper knows that what happened is the Japanese "bubble economy" burst and they ran out of easy money.

15. In fact, we need to build a good, stable, slow growing economy to provide our children with a secure future with decent jobs. We don't need another GOLD RUSH which will not last and which benefits only a few people.

16. The SMART (read Duty Free, Japan Air Lines, Nikko Hotel, Larry Hillblom, Willie Tan, Michael Dotts and Rex Kosack) organization says "Goodbye to Senate Bill 8-124 and Hello to Public Law 8-32." What they and their secret backers really mean is this: " Goodbye to Article XII and Welcome to Foreign Land Owners. "

17. Sen. Paul admitted that he let his name be used in about a dozen illegal Article XII deals involving Saipan land. Doesn't that give him a conflict of interest?

18. Sen. Paul praised Public Law 8-32 as "democracy " in action. Show Sen. Paul and all those in the Eight Legislature who helped him and Duty Free and Japan Air Lines and Larry Hillblom (and all the other violators of Article XII) that the Commonwealth government is not for sale! Show them that the law and the courts of the Commonwealth must be respected.

19. Public Law 8-32 will be challenged in the courts and the appeals will go on for many years. Meanwhile, everyone, landowners and investors alike, will have to wait to see how it will all come out.

20. Remember this when you cast your ballot for the candidate of your choice: Public 8-32 can be repealed by the Ninth Legislature and IT SHOULD BE REPEALED BY THE NINTH LEGISLATURE. IT IS AN INSULT AND A DISGRACE TO THE PEOPLE OF THE COMMONWEALTH.

21. Make sure your vote is a vote against Senate Bill 8-124 and Public Law 8-32. Send a clear message: "GOODBYE TO PUBLIC LAW 8-32 AND WELCOME BACK TO ARTICLE XII."

Paid for by Citizens Concerned For Artic

Pacific Daily News
Friday, January 27, 1994
Vol. 14, No. 52
Agana, Guam

High court clears land lease issue

By GAYNOR DUMAT-OL
Daily News Staff

A recent commonwealth Supreme Court opinion of a case involving Diamond Hotel Co. has cleared an Article 12 issue that may have also caused other Saipan hotel owners to worry about their land leases.

The Jan. 19 ruling said Diamond Hotel's 55-year lease of two hectares of land near the hotel site in Susupe is valid, even if a provision in the lease agreement extends the lease for 35 more years, if the law changes to permit a term that long.

Article 12 of the Northern Marianas Constitution limits persons not of Northern Marianas descent to a 55-year lease.

The Supreme Court said that the provision to extend the lease to 35 years violates the constitution, but the agreement was written in a way that the extension provision can be severed to save other portions of the lease.

Juan T. Lizama, counsel for Diamond Hotel, said the opinion was the first from the Supreme Court that says a questionable portion of a lease can be severed.

"It clears another important issue of Article 12," Lizama said.

The Hotel Association of the Northern Marianas and the Saipan Bankers Association submitted written arguments in support of Diamond Hotel's contention that the portion of a lease agreement that violates Article 12 can be severed.

The outcome of the Diamond Hotel case is welcome news for hotel owners. According to the Diamond Hotel attorney, provisions to allow leases beyond 55 years in case of a change of law, "is pretty common," in hotel land leases.

Diamond Hotel initiated the court action to clarify its leasehold right to the property in 1992, when big businesses such as Pacific Islands Club and Duty Free Shoppers were hit with Article 12 cases.

Hotel Nikko was sued for an alleged Article 12 violation as well, and the case is still pending.

Diamond Hotel leased the property from Manases B. Matsunaga in 1986.

When Manases Matsunaga died, his sister Elizabeth Matsunaga, inherited all rights and title to the leased premises.

The Matsunaga sister contended later that the option to

❑ See LAND, Page 4

Land: Decision reversed

❑ Continued from Page 1

extend the 55-year lease for an additional 35 years makes Diamond Hotel's lease of the property a violation of Article 12.

The Superior Court sided with Elizabeth Matsunaga's argument, and in 1993, declared the entire Diamond Hotel lease agreement void.

Diamond appealed in commonwealth Supreme Court.

The Supreme Court last week reversed the Superior Court's 1993 decision.

Diamond had plans to develop the two-hectare land into a multi-purpose commercial center, or make it an extension of the isting hotel.

Prior to the case, the land temporarily used as a hous site for the hotel's non-resid workers.

Diamond Hotel owners happy about the outcome of case, Lizama said, but the h is not rushing to resume plan develop the property.

Landowner Elizabeth M sunaga might decide to ele the case to the Ninth Cir Court of Appeals. days to do so.

If that happens, bu... ...de in for another long wait.

Mitchell to petition 9th circuit on Aldan-Pierce vs. Ma

LONG-TIME Saipan lawyer Ted Mitchell is set to file a petition to the United States Ninth Circuit Court of Appeals seeking for reconsideration of its judgment on Aldan-Pierce vs. Mafnas land case.

In a press conference yesterday at his Susupe office, Mitchell said the federal court erred in handing down the decision on the Article XII case.

In its December 13, 1993 decision, the Circuit Court determined that the Superior Court ruling on the land case between Marian Aldan-Pierce and Leocadio Mafnas was final and unreviewable.

Aldan-Pierce won in the land battle against Mafnas involving 8,708 square meters of property in San Roque in the late 1980s.

The legal battle between Aldan-Pierce and the defendant began in 1986.

On September 15, 1984, Antonia Villagomez entered into an option agreement with Mafnas for the sale of a portion of the San Roque property. The option, which became effective upon execution, was to remain in effect until July 7, 1985.

The option consideration was paid to the landowner by Brian McMahon, who was not of Northern Marianas descent. In return, Mafnas must obtain a certificate of title to the property and to deliver it and a warranty deed to Villagomez, at $10 per square meter.

However, Mafnas refused to comply, alleging that Villagomez acted as agent of McMahon and a certain Randall Fennell in the land transaction.

Mafnas said since McMahon and Fennel were not of Northern Marianas descent, the sale of the property violated Article XII provisions of the Common-wealth Constitution which prohibit non-NMDs from owning lands in the CNMI.

Villagomez assigned her interest under the option to Aldan-Pierce who subsequently filed a lawsuit against Mafnas in March 1986 in a bid to enforce the option agreement between her and McMahon and Fennel.

Aldan-Pierce eventually won the land case against Mafnas, a decision which was affirmed by the U.S. District Court's Appellate Division.

The defendant then appealed the Appellate Division's ruling in the Ninth Circuit Court. On May 2, 1989 however, a new law was adopted by the CNMI Legislature with-drawing the jurisdiction of the District Court to hear appeals from local courts and at the same time transferring appellate jurisdiction to a new CNMI Supreme Court.

As a result of the Commonwealth Judicial Reorganizational Act of 1989, the final decisions of the new Supreme Court became appealable to the Ninth Circuit Court in California for 15 years.

Mafnas filed an appeal with the Supreme Court and voluntarily withdrew his appeal to the California court, a request which was granted by the federal appeals court.

Mafnas' action followed a decision of the CNMI's highest court to transfer all pending appeals from the District Court to its jurisdiction.

In 1990, the District Court issued a mandate stating that its decision affirming the the Commonwealth Trial Court's ruling stand as issued.

The California court ordered the District Court to recall and vacate its mandate following an appeal from Mafnas.

The CNMI Supreme Court soon overturned the Superior Court's decision which Aldan-Pierce eventually challenged at the Ninth Circuit Court.

This time, the Ninth Circuit Court held Aldan-Pierce's claim that the CNMI Supreme Court did not have authority to rehear Mafnas' appeal.

In a decision written by Circuit Judge William A. Norris, the court stressed that "As the successor to the Appellate Division's jurisdictional power..., the Supreme Court assumed no greater ... power over this case than the Appellate Division and after (the dismissal of Mafnas' appeal to the Ninth Circuit Court.)"

The decision which was also signed by judges Robert R. Beezer and Andrew J. Kleinfeld further stated that since the dismissal left the Appellate Division with no jurisdiction to disturb the judgment of the CNMI Supreme Court, (then the same court) had no jurisdiction to disturb that judgment.

"Any suggestion to the contrary in Mafnas II was in error... the CNMI Supreme Court's jurisdiction in this case was limited to issuing a mandate affirming the judgment of the Superior Court," the Ninth Circuit ruling said.

"The judgment of the Supreme Court is vacated and the judgement of the Superior Court is reinstated as final and unreviewable," the court said.

Atty. Mitchell said he would challenge the Ninth Circuit's ruling, saying it "nullified... Article XII and the power of the Supreme Court."

"We will file a petition for rehearing at the Ninth Circuit Court," Mitchell said in a midday conference which saw MCV's Carlotta Deleon Guerrero engaging in an argument with the lawyer.

The heated argument ensued after Deleon Guerrero asked Mafnas how much involvement the latter had in the litigation.

Mitchell reacted in a high-pitched tone by saying it was none of Deleon Guerrero's business. He said any communications between him and his client are exclusively theirs.

In making the petition to the Ninth Circuit Court, Mitchell said he will tell the judges that "you made a mistake...reconsider (your decision) and reverse."

Mitchell said "because the integrity of the Covenant was violated," the treaty itself was also bridged.

According to Mitchell, if the three Ninth Circuit judges decline to reverse their decision, the issue automatically goes to the 28 Judges of the federal court.

An 11-man bench including the Chief Judge will then be formed if one of the judges called for a vote regarding the appeal.

It is possible that after reviewing the Aldan-Pierce vs. Mafnas case, the ruling of the three judges would be nullified and reversed.

Mitchell vowed to pursue the case to the United States Supreme Court should the 11 judges affirm Norris' opinion.

Mitchell said if the defend succeeded in getting a review fr the highest court but lost in mer Mafnas will still emerge as winner.

He said his client will end up fil a petition at the Superior Court reconsider, review or nullify a 19 decision on a land case.

Judge Haffner of the then Co monwealth Trial Court made a d sion based on the "resulting t doctrine."

In the Ninth Circuit's decision Ferreira vs. Borja, however, the f eral court ruled that no court can "resulting trust doctrine," stress that it's the law.

There is a conflict, Mitchell sa because the August 1993 decision the federal court of appeals does agree with an earlier decision the Commonwealth Trial Court 1986.

"Judge Norris sidestepped A ticle XII issue," he said. "Nor based his ruling on jurisdictio question and sent case straight the Superior Court," Mitchell to the Variety yesterday afternoo

Supreme Court settles land case

■ **Article 12:** Judges decide Ferreira alone has right to any, all land claims

By GAYNOR DUMAT-OL
Daily News Staff

The commonwealth Supreme Court yesterday issued an opinion that will allow Northern Marianas descendant Diana C. Ferreira to finally enjoy exclusive ownership of three parcels of land in San Roque, Saipan after eight years of litigation.

Diana C. Ferreira bought the land from three Mafnas sisters — Isidora, Isabel and Rosalia — in 1986 and went to court later that year to clarify her ownership of the property.

The Mafnas sisters were claiming that Diana Ferreira's acquisition of the land was void because the money Ferreira used came from people who are not of Northern Marianas descent and are not eligible to buy land under Article 12 of the commonwealth Constitution.

According to the Supreme Court opinion, non-Northern Marianas descendants who provided Ferreira with the money to buy the three parcels of land — including her husband Frank Ferreira Jr., who is originally from Hawaii — have no legal right to the land whatsoever.

But because Diana Ferreira is of Northern Marianas descent, her purchase of the three contested parcels of land was valid.

The two other people not of Northern Marianas descent, James Grizzard and his wife, Barbara, who contributed money for the purchase, had no right to claim ownership of the property, the Supreme Court opinion said.

Yesterday's opinion was written by Chief Justice Jose Dela Cruz, Associate Justice Pedro Atalig and Special Judge Edward King.

The commonwealth high court's opinion reversed a summary judgment issued in 1988 by then-commonwealth trial court Judge Ramon G. Villagomez.

Villagomez ruled in favor of the Mafnas sisters. The three parcels of land never left the hands of sisters Isabel, Isidora and Rosalia because Diana Ferreira acted as agent for people not of Northern Marianas descent, the 1988 judgement says.

❑ See LAND, Page 4

Land: Free title given to Ferreira

❑ Continued from Page 1

Villagomez said the case was about a real estate broker, Frank F. Ferreira Jr., who used his wife and teamed up with non-Northern Marianas descendants to create sophisticated land deals for joint future profit.

"The framers of the constitution were not naive. They knew someone would try to figure out a way to acquire land despite the constitutional restrictions," Villagomez's 1988 judgment in favor of the Mafnas sisters said.

The commonwealth Supreme Court agreed that the non-Northern Marianas descendants who collaborated with Diana C. Ferreira had no right to the land, notwithstanding the fact they provided the purchase money.

But because Diana C. Ferreira is eligible to buy land, "all fee title interest in the land at issue...is quieted in the name of plaintiff," the Supreme Court opinion said.

"We remand this matter to the trial court with instructions to enter final judgment and decree quieting title to all three of the three lots to Diana," according to the Supreme Court.

In 1988, Diana Ferreira leased the three parcels of land to Nansay Micronesia Inc. for 55 years for $5.9 million.

Article XII controversy

By Flor B. Pamintuan

Dela Cruz

A decision that will nullify the existence of the controversy surrounding Article XII known as the Restrictions of Alienation of Land was handed down by the Supreme Court on Wednesday.

In a 1986 civil complaint filed by Diana C. Ferreira against Rosalia Mafnas Borja, Isidora Mafnas Salas, Feliza M. Babauta, Carmen M. Guerrero, William M. Borja, Jose M. Borja, Luna M. Borja and Patricia B. Robert, Chief Justice Jose C. Dela Cruz together with Justice Pedro M. Atalig and Special Judge Edward King returned the judgment in favor of the plaintiff.

Ferreira appealed from a Trial Court order granting the defendants cross motion for summary judgment. The matter was heard on remand from the Ninth Circuit Court of Appeals, to "reconsider the interpretation of resulting trust law..."

According to the Supreme Court, they agree with the Ninth Circuit, in that because the purported transaction to be accomplished had an illegal purpose, no resulting trust would have arisen in favor of third parties not of Northern Marianas descent.

"In light of our conclusions that neither the resulting trust doctrine nor agency principles may be applied to render Diana's transactions with the defendants unconstitutional, there is no occasion to consider the constitutionality of any agreements she may have had with non-NMDs not parties to this quiet title action," the order said.

"Based on the foregoing, we hereby reverse the court's grant of summary judgment against Diana in favor of defendants and remand this matter to the trial court with instructions to enter final judgment and decree quieting title in all three of the lots to Diana," the justices said.

Ferreira filed a complaint in 1986 to quiet title in three parcels of land in the CNMI which she had purchased from the Borja family. Ferreira is a person of Northern Marianas descent who obtained financing for the land from persons not of Northern Marianas descent. In return for the financing, she entered into a partnership agreement with these persons in which she agreed to lease the land to partnership for 40 years.

Article XII of the CNMI Constitution restricts ownership of Commonwealth land to persons of NMI descent. At the time Ferreira entered into the agreement, Article XII permitted persons not of NMI descent to hold leases of up to 40 years. It has since been amended to allow leases of up to 55 years.

The Borjas contested her claim to title, arguing that their sale of the land to her was void because it violated Article XII by giving a permanent interest in CNMI land to persons not of Northern Marianas descent.

The Superior Court granted summary judgment in favor of the Borjas, holding that the land sale violated Article XII because Ferreira had bought the land as an agent for persons not of Northern Marianas descent.

On appeal, the CNMI Supreme Court affirmed but on different grounds. Applying the common law "resulting trust" doctrine, the CNMI Supreme Court ruled that Ferreira held the land trust for her non-Northern Marianas partners, who the

See Supreme, Page 20

Supreme...

From Page 9

Court said, were the true owners. The Court voided the sale and gave the land back to its original owners, the Borjas.

Ferreira contends that the CNMI Supreme Court's decision stripping her of title to the land violated both the equal protection and due process clauses of the Fourteenth Amendment. She claimed that the Court engaged in a legal sleight-of-hand to take the land away from her and return it to the Borjas.

At the Ninth Circuit, Special Judge Edward King agreed with Ferreira that the resulting trust doctrine had no applicability here. He argued that the proper test for whether a particular land sale violated Article XII is whether it gives an excessive long-term interest in the land to a non-Northern Marianas person.

Judge King said that courts should "scrutinize carefully any transactions entered into by a non-Northern Marianas person to determine whether the transaction would result in acquisition of a long-term interest by a non-Northern Marianas person, or in having the land pass out of the hands of the people of the CNMI".

The Court ruled that even if Ferreira and her partner did intend to create a resulting trust in favor of partners not of CNMI descent, their actions would not have created a resulting trust because the transactions would have an illegal purpose-avoidance of the land alienation restrictions of Article XII.

They said that the Commonwealth cannot constitutionally deprive a person of a proper interest through the expedient of an untenable judicial interpretation of local law that denies that a property interest ever existed. The court thus vacated the judgment of the CNMI Supreme Court.

The decision which was passed by the Supreme Court agrees with the Ninth Circuit decision and in a separate judgment by Chief Justice Dela Cruz, he said that "all fee title and interest in the land at issue, legal and equitable is quieted in the name of the plaintiff, Diana C. Ferreira."

According to Theodore Mitchell, attorney for the defendant, the decision of the Supreme Court completely nullifies Article XII. "Because of this decision, they can go find any Chamorro, buy the land, sign the deed and the real owner can control the agreement," he said.

Covenant violated by Art. 12 decision, says Mitchell

By Rafael I. Santos
Variety News Staff

SAIPAN lawyer Theodore Mitchell yesterday vowed to take all possible steps to see a reversal of an Article XII decision which he said violated the CNMI Constitution and the Covenant.

Mitchell was referring a judgment issued by the United States Court of Appeals, Ninth Circuit, on a land case between Diana C. Ferreira and the Borja family led by Rosalia Mafnas.

On August 19, 1993, the California appeals court reversed a CNMI Supreme Court decision which found the land transaction between Ferreira and the Borja family to be violative of Article XII of the commonwealth constitution.

Article XII restricts ownership of land in the CNMI to persons of Northern Marianas descent.

In 1986, Ferreira purchased three parcels of land from the Borjas using money from persons led by her husband Frank who are

Continued on page 10

Theodore Mitchell

Supreme Court settles land case

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By GAYNOR DUMAT-OL
Daily News Staff

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But because Diana Ferreira is of Northern Marianas descent, her purchase of the three contested parcels of land was valid.

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❑ Continued from Page 1

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PACIFIC DAILY NEWS, JANUARY 6, 1995

from the PUBLISHER

Article 12 scares investors away?

Article 12 of the Constitution repeatedly comes out in the limelight of our daily chores.

Especially at present when the Superior Court ruled in favor of the Wabol family in the litigation case against Philippine Goods, Inc. and Transamerica who were ordered to vacate the area where they are located.

Some observers say that this case relating Article 12 is justice, however, some expressed fear it may be a precedence that may scares investors away from the CNMI.

I believe it is now the right time for the Legislature to address this problem seriously and something must be done in order to avoid further bustles with regards to this specific provision of the Constitution.

Others disagreed with the decision the Superior Court rulings. However, it the law and we have to respect that.

"Dura lex, sed lex." The law may be hard, but it still the law.

Before it is too late, something has to be done to clearly define what really is Article 12.

True, it is for the people of the CNMI's protection to own the land forever.

But that does not mean that they cannot negotiate it with monetary considerations.

As I see it in the general perspective of Article 12, it is for the common good of both investors and landowners.

Only that, I think, one enormous difficulty that burdens the prospective business investors is the overfiled requirements that investors has to wait even more than a year to get CRM licenses for that matter.

The Developer has yet to spent thousands if not millions of dollars first before he got his project initiated.

We know very well that the economic situation is very hard. Therefore, you can not find any developer for that matter who reserves more than what his financial plan for the project.

Finally, I would like to emphasize that again the definition of Article 12 has got to be clearly spelled out, otherwise, we are chasing away investors in our

***

April 2, 1993 Marianas Review

Wabol case on verge of clash

By DAN PHILLIPS
Daily News Staff

A long-standing land dispute involving beachfront property in Garapan and Article 12 of the Commonwealth Constitution has the commonwealth and federal judicial systems on a potential collision course.

Concepcion S. Wabol filed a lawsuit against Victorino U. Villacrusis, Philippine Goods, Inc., and Transamerica Corp. in 1984, claiming that she should regain the property she leased to Philippine Goods in 1978 due to a violation of Article 12.

The U.S. Ninth Circuit Court of Appeals ruled in March 1992 that Wabol was entitled to regain the property due to a violation of Article 12, which restricts ownership and leasehold interests exceeding 55 years in commonwealth land to people of Northern Marianas descent.

When the U.S. Supreme Court refused to hear a final appeal, Wabol thought she had won and asked the Superior Court for an order enforcing her repossession of the property.

Brief possession

Wabol secured a writ of possession from the Superior Court in April of this year and briefly held possession of the Transamerica building before Philippine Goods successfully got the Commonwealth Supreme Court to hold off on letting Wabol claim her land because of an unsettled new claim involving claims of new leases between Wabol and Transamerica.

Ted Mitchell, the lawyer representing Wabol, said that even if the new leases are valid, the courts should not consider them because the leases were not brought before the courts soon enough. The new leases were executed in 1991, when the Wabol case was still alive on appeal.

The CNMI Supreme Court has allowed Transamerica and Philippine Goods to remain on the disputed land while the validity of the 1991 leases is being litigated.

"The Ninth Circuit's judgment is binding on the parties," he said.

Complicating the outcome of the case is the development of a side dispute involving whether the Commonwealth Supreme Court has the authority to consider the Wabol case at all, a dispute that could pit the commonwealth's judicial system against the Ninth Circuit.

In an opinion issued on Dec. 6, a three-judge Ninth Circuit panel ruled that the Commonwealth Judicial Reorganization Act, which created the CNMI Supreme Court, could not act to remove appeals of CNMI cases that were pending in the Ninth Circuit at the time of the act's

☐ See DECISION, Page 6

Decision: Court case

☐ Continued from Page 1

passage in May 1989.

Mitchell said the Ninth Circuit has upheld the act's authority to remove appeals that were pending before the appellate division of the U.S. District Court when the act was enacted, but not appeals that were pending before the Ninth Circuit.

In its opinion, the Ninth Circuit overturned the CNMI Supreme Court's ruling that it had the authority to hear the appeal in the Wabol case. The Ninth Circuit also ordered the CNMI Supreme Court to dismiss the case.

A legal black hole

The ruling left open the question of whether the Ninth Circuit should direct the case back to the Superior Court through the CNMI Supreme Court or through the District Court's appellate division, which no longer exists.

Mitchell said the decision in favor of Wabol, as it stands now, "can't be enforced because the Ninth Circuit's mandate falls into a black hole in the Horiguchi Building (the home of the District Court) and can't come out."

"The result is that Wabol wins on the merits, but it's completely unenforceable because the CNMI Supreme Court's decision governs in the commonwealth. The Ninth Circuit giveth and the CNMI Supreme Court taketh away," he said.

Change of direction

Mitchell, who argued before in favor of the CNMI Supreme Court's right to hear the Wabol case appeal, said he is now in a position of having to go in the opposite direction.

"We now intend to file a petition with the Ninth Circuit, asking the Ninth to issue an order approving of the issuance of the writ of possession to Wabol and prohibiting any other CNMI judge from interfering with the writ's issuance and execution," he said.

"We have no alternative, and if the Ninth Circuit grants our request, there's no way to stop it," Mitchell said.

"What we are preparing to do will either lose the case forever or save the whole thing," he said.

Article 12 plaintiff wins

THE SUPERIOR Court has ruled in favor of the plaintiff in yet another Article XII suit filed against a certain Jesus S. Leon Guerrero (not the mayor of Saipan) and two others over the sale of a piece of land on Rota five years ago.

In his decision over the case of Felicidad C. Boddy versus Leon Guerrero et al., Associate Judge Miguel S. Demapan upheld the plaintiff's claims that the buyer of the land, Eugenia Guerrero was not of Northern Marianas descent.

Under Article XII of the Commonwealth constitution, only people of Northern Marianas descent are entitled to own lands in this part of the Pacific. This provision was included by the framers of the constitution to protect the rights and culture of the NMI people from foreign capitalists who could easily purchase acres of lands for their business and development.

Boddy's case against Guerrero stemmed from the land transaction between former by Ana Naholowaa, who was also named in the civil suit.

Naholowaa, a person of Northern Marianas descent, bought the land in May 1988 from Boddy at the amount of $50,000 for use by Eugenia and Jesus Leon Guerrero. The money was provided by the couple.

On January 8, 1993, however, defendants executed a promissory note from Naholowaa to the Guerreros in the amount of $45,000, plus interest, and a mortgage in the same amount on the property. Then on January 4, 1993, the Guerrero couple quit-claimed any interest they may have in the land to Naholowaa.

Boddy later filed an Article XII suit against the Guerreros and Naholowaa, saying the transaction between the plaintiff and the defendant did not actually create a "resulting trust" in favor of the non-NMD's.

Eugenia Guerrero's lawyer has told the Superior court that the Article XII provision was not violated, saying Eugenia was an NMD. The defense has said that Eugenia's grandfather was appointed mayor of Rota from Guam in 1890. Her mother was born on Rota in 1895 and lived there with her until 1908, when the family went back to Guam. In 1950, Eugenia became a U.S. citizen, pursuant to the Organic Act of Guam.

However, section 4 of the Article XII however clearly defines

continued on page 6

Article 12. . . continued from page 1

that an NMD if he was born or domiciled in the Northern Marianas by 1950 and was a citizen of the Trust Territory of the Pacific Islands before the termination of the Trusteeship with respect to the Commonwealth.

"Applying this authority to the facts, this court finds that Eugenia... is not an NMD as defined by Article XII. Her family came from Guam to Rota in 1891 as colonial administrators and left in 1891."

Because of the stated facts, the court ruled in favor of Boddy. The court decision was made last November 17.

PDN – DEC. 3, 1993

Case will be first test of new law

By DAN PHILLIPS
Daily News Staff

Associate Justice Ramon G. Villagomez of the Commonwealth Supreme Court removed himself yesterday from a three-justice panel considering a lawsuit involving Article 12 of the CNMI Constitution.

Villagomez, whose ruling came a day after a hearing was held on the issue of whether he should step down, said that his close family relationship to one of the sisters who filed the Article 12 case involving the Hotel Nikko forced him to step down.

His ruling came in the lawsuit filed by Diamond Hotel against landowner Elizabeth B. Matsunaga, which involves land in Susupe upon which the hotel wants to build employees' housing.

Villagomez said that since the constitutionality of at least one section of Public Law 8-32, the recently enacted legislation that offers guidelines for the judicial interpretation of Article 12, is at stake in the Diamond Hotel case, it would affect the Nikko case.

Article 12 restricts ownership and leasehold interests exceeding 55 years in commonwealth land to people of Northern Marianas descent.

As a result of Villagomez's decision, the scheduled Dec. 21 oral arguments in the Diamond Hotel case were taken off-calendar and the process of selecting a special judge to replace Villagomez began.

The Diamond Hotel case offers the first serious test for the new law, particularly the sections addressing "severability" and "equitable adjustment."

The law's section on severability would allow any section of a land lease that violates Article 12 to be cut out, with the rest of the lease agreement remaining intact as long as neither party has been unjustly affected.

At issue in the Diamond Hotel case is a section that would enable the hotel to gain an interest in the land beyond 55 years if the commonwealth's law is later changed to allow the greater interest.

The hotel contends that the section does not violate Article 12 and that, even if it does, it should not cause the entire lease agreement to be struck down.

If a violation of Article 12 is found, Lizama wants the new law's section on equitable adjustment to come into play.

❑ See LAW, Page 4

Law: Article 12 case faces test

❑ Continued from Page 1

The new law provides that if property is lost due to an Article 12 violation, then whoever lost the land is entitled to compensation for any improvements made, as well as for rental payments or purchase money paid.

Lizama also argued that no part of Public Law 8-32 is unconstitutional and that the Legislature did not infringe upon the courts' authority in enacting the law.

Arguments offered by the Hotel Association of the Northern Marianas and the Saipan Bankers Association, which were welcomed by the Supreme Court as "friends of the court," supported Lizama's contentions.

Robert W. Jones, the lawyer representing Matsunaga, has contended that the entire lease agreement in question is completely void under Article 12 and that both the severability and equitable adjustment sections of Public Law 8-32 are unconstitutional.

9th Circuit reverses high court ruling on Wabol case

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THE UNITED States Court of Appeals for the Ninth Circuit has reversed a previous judgment of the CNMI Supreme Court that asserts jurisdiction over an appeal in Wabol case which was pending before the federal court.

In a decision written by Circuit Judge Arthur L. Alarcon, the court said the NMI's highest court lack jurisdiction over an appeal on an Article XII judgment against Victorino Villacrusis, Philippine Goods, Inc. and Trans-America Corporation.

On June 5, 1989, Concepcion Wabol, who had won an Article XII case against Villacrusis et. al. petitioned the then newly created CNMI Supreme Court requesting it to assert jurisdiction over an appeal in Wabol I which was pending at the Ninth Circuit Court.

Wabol's action followed the adoption of the Judicial Reorganization Act of 1989. The Act purported to divest the federal courts of jurisdiction over all pending and future appeals from the courts of the Northern Marianas.

Wabol's motion that the CNMI assume jurisdiction over the appeal of Philippine Goods Inc. at the California court, was granted on December 11, 1989.

In its decision, the high court said "the Northern Marianas may vest in this court appellate jurisdiction over commonwealth cases which were pending before the Ninth Circuit in May 2, 1989."

The Supreme Court decision centered only on the question of jurisdiction and did not address the merits of the Article XII case which Wabol brought against Philippine Goods.

The pending appeal at the Ninth Circuit Court stemmed from the decision of the U.S. District Court's Appellate Division to reverse the Article XII judgment against Philippine Goods.

In that said judgment, the Superior Court ruled in favor of the plaintiff, Concepcion Wabol and reformed a land lease between the Wabol family and Philippine Goods based on equitable considerations. The ruling however was reversed by the U.S. District Court here, saying the Commonwealth constitution did not permit reformation and remanded for determination of the value of improvements and extent of any rights arising from quasi-contract or

continued on page 6

NMI. . .

continued from page 1

periodic tenancy.

Thus Philippine Goods filed a timely appeal to the California court in the judgment on Wabol I by the Superior Court.

Wabol however challenged the appeal and petitioned the CNMI Supreme Court requesting the same to take over jurisdiction of the defendant's appeal.

The Supreme Court eventually granted Wabol's petition.

The Ninth Circuit Court however came up with a decision recently, stressing that the CNMI had no right to assert authority over the appeal in Wabol I.

"(The CNMI) is without power under the Covenant to divest this court of jurisdiction over appeals properly filed from a final order of the appellate division of the district court...," according to the law of the Ninth Circuit court which was cited by Judge Alarcon.

Judge Alarcon explained that the Ninth Circuit Court has jurisdiction over all appeals from final decisions of the CNMI Supreme Court for 15 years following the establishment of an appellate court of the Northern Marianas.

Wabol had earlier contended that the high court's order is not a final ruling because it is limited to the question of jurisdiction and does not address the merits of the case.

Article XII controversy

By Flor B. Pamintuan

Dela Cruz

A decision that will nullify the existence of the controversy surrounding Article XII, known as the Restrictions of Alienation of Land was handed down by the Supreme Court on Wednesday.

In a 1986 civil complaint filed by Diana C. Ferreira against Rosalia Mafnas Borja, Isidora Mafnas Salas, Feliza M. Babauta, Carmen M. Guerrero, William M. Borja, Jose M. Borja, Luna M. Borja and Patricia B. Robert, Chief Justice Jose C. Dela Cruz together with Justices Pedro M. Atalig and Special Judge Edward King returned the judgment in favor of the plaintiff.

Ferreira appealed from a Trial Court order granting the defendants cross motion for summary judgment. The matter was heard on remand from the Ninth Circuit Court of Appeals, to "reconsider the interpretation of resulting trust law."

According to the Supreme Court, they agree with the Ninth Circuit, in that because the purported transaction to be accomplished had an illegal purpose, no resulting trust would have arisen in favor of third parties not of Northern Marianas descent.

"In light of our conclusions that neither the resulting trust doctrine nor agency principles may be applied to render Diana's transactions with the defendants unconstitutional, there is no occasion to consider the constitutionality of any agreements she may have had with non-NMDs not parties to this quiet title action," the order said.

"Based on the foregoing, we hereby reverse the court's grant of summary judgment against Diana in favor of defendants and remand this matter to the trial court with instructions to enter final judgment and decree quieting title in all three of the lots to Diana," the justices said.

Ferreira filed a complaint in 1986 to quiet title in three parcels of land in the CNMI which she had purchased from the Borja family. Ferreira is a person of Northern Marianas descent who obtained financing for the land from persons not of Northern Marianas descent. In return for the financing, she entered into a partnership agreement with these persons in which she agreed to lease the land to partnership for 40 years.

Article XII of the CNMI Constitution restricts ownership of Commonwealth land to persons of NMI descent. At the time Ferreira entered into the agreement, Article XII permitted persons not of NMI descent to hold leases of up to 40 years. It has since been amended to allow leases of up to 55 years.

The Borjas contested her claim to title, arguing that their sale of the land to her was void because it violated Article XII by giving a permanent interest in CNMI land to persons not of Northern Marianas descent.

The Superior Court granted summary judgment in favor of the Borjas, holding that the land sale violated Article XII because Ferreira had bought the land as an agent for persons not of Northern Marianas descent.

On appeal, the CNMI Supreme Court affirmed but on different grounds. Applying the common law "resulting trust" doctrine, the CNMI Supreme Court ruled that Ferreira held the land trust for her non-Northern Marianas partners, who the

See Supreme, Page 20

Covenant. . .

Continued from page 1

not of Northern Marianas descent. Later she filed a suit to "quiet the title in three parcels of land" or in Mitchell's terms to "get rid of potential problems."

The Borja family then waged a legal battle with Ferreira asserting that the 1986 land deal was void because it violated the constitution by giving a permanent interest in a property to non-NMDs. The commonwealth trial court granted the original landowners a summary judgment which found Article XII violations.

The Superior Court said Ferreira, a person of Northern Marianas descent, was used as a front by to purchase the parcels of land. The decision was however reversed by the appellate division of the U.S. District Court which then had jurisdiction over the Northern Marianas court.

Following the creation of the CNMI Supreme Court in 1989, defendants fought a long jurisdictional war that eventually led to the loss of jurisdiction on the part of the district court.

The newly-created high court affirmed the Superior Court's ruling, voided the sale and gave the land back to the Borjas in 1992.

In the Ninth Circuit, the Supreme Court judgment was reversed following an appeal from Ferreira.

Plaintiff had argued that stripping her of the land title violated her equal protection and due process rights. She also contended that she was discriminated against just because she received financing from non-NMDs.

"A state cannot validly effect a taking of property by the simple expedient holding that the property right never existed," the circuit court said in a 1993 ruling. The same ruling also vacated the Supreme Court decision and remanded the case "for further proceedings consistent with this opinion."

A year after receiving the San Francisco court order, the CNMI high court issued a decision reversing its earlier judgment against Ferreira.

By virtue of the January 4 order, all fee title and interest in the property involved were transferred in name of Ferreira.

Supreme Court justices said "there is no occasion to consider the constitutionality of any agreements [Ferreira] may have had with non-NMDs not parties to this quiet title action."

The lower court's grant of summary judgment against plaintiff was also reversed and was ordered to enter a final judgment and decree in favor of Ferreira.

Mitchell, who has handled major land cases in the CNMI, yesterday said he would appeal for rehearing in the Supreme Court.

"This is not the end," he said in an afternoon interview.

Mitchell said he will ask the high court to reaffirm its earlier judgment on the case.

Local justices must insist that the Ninth Circuit has no jurisdiction over matters that have to do with commonwealth law, he said.

"This is the first case where we have the Ninth Circuit encroaching upon the authority of the Supreme Court...to make a final binding decision on an issue of commonwealth law."

And this is troublesome, he said, because this means every decision of the CNMI's highest court can be appealed to the Ninth Circuit, rendering it powerless.

The same argument has been rejected by the California court which ruled that "we may examine the CNMI court's interpretation of CNMI law..."

Nevertheless Mitchell still plans to raise the same argument in either the Supreme Court or the Ninth Circuit. The lawyer said reversal of the Ferreira ruling meant an end to the Article XII.

In an interview yesterday, Mitchell said the reversal violated both the CNMI Constitution and the Covenant between the United States and the Northern Marianas.

If the Supreme Court denies Mitchell's motion, the matter would be appealed in the Ninth Circuit. He said he would even ask the U.S. Supreme Court for a review of the case should the California court deny his appeal.

1986.

On September 15, 1984 [illegible]tia Villagomez entered into [illegible]n agreement with Mafnas f[illegible]le of a portion of the San Roque property. The option, which became effective upon execution, was to remain in effect until July 7, 1985.

The option consideration was paid to the landowner by Brian McMahon, who was not of Northern Marianas descent. In return, Mafnas must obtain a certificate of title to the property and to deliver it and a warranty deed to Villagomez, at $10 per square meter.

However, Mafnas refused to comply, alleging that Villagomez acted as agent of McMahon and a certain Randall Fennell in the land transaction.

Mafnas said since McMahon and Fennel were not of Northern Marianas descent, the sale of the property violated Article XII provisions of the Common-wealth Constitution which prohibit non-NMDs from owning lands in the CNMI.

Villagomez assigned her interest under the option to Aldan-Pierce who subsequently filed a lawsuit against Mafnas in March 1986 in a bid to enforce the option agreement between her and McMahon and Fennel.

Aldan-Pierce eventually won the land case against Mafnas, a decision which was affirmed by the U.S. District Court's Appellate Division.

The defendant then appealed the Appellate Division's ruling in the Ninth Circuit Court. On May 2, 1989 however, a new law was adopted by the CNMI Legislature with-drawing the jurisdiction of the District Court to hear appeals from local courts and at the same time transferring appellate jurisdiction to a new CNMI Supreme Court.

As a result of the Commonwealth Judicial Reorganizational Act of 1989, the final decisions of the new Supreme Court became appealable to the Ninth Circuit Court in California for 15 years.

Mafnas filed an appeal with the Supreme Court and voluntarily withdrew his appeal to the California court, a request which was granted by the federal appeals court.

Mafnas' action followed a decision of the CNMI's highest court to transfer all pending appeals from the District Court to its jurisdiction.

In 1990, the District Court issued a mandate stating that its decision to the Ninth Circuit Court.)"

The decision which was also signed by judges Robert R. Beezer and Andrew J. Kleinfeld further stated that since the dismissal left the Appellate Division with no jurisdiction to disturb the judgment of the

ence which saw MCV's Carlotta Deleon Guerrero engaging in an argument with the lawyer.

The heated argument ensued after Deleon Guerrero asked Mafnas how much involvement the latter had in the litigation.

the Aldan-Pierce vs. Mafnas case, the ruling of the three judges would be nullified and reversed.

Mitchell vowed to pursue the case to the United States Supreme Court should the 11 judges affirm Norris' opinion

[illegible] Trial Court [illegible]
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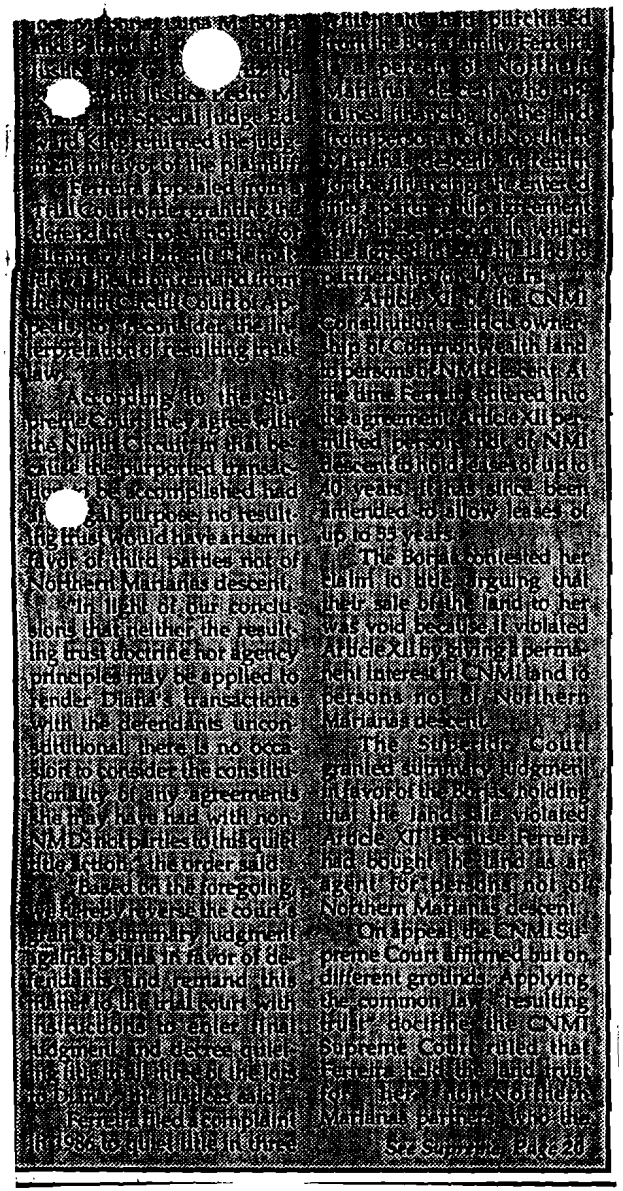
Judge Norris sidestepped Ar[illegible]
: XII issue," he said. "Norris based his ruling on jurisdictional question and sent case straight to the Superior Court," Mitchell told the Variety yesterday afternoon.



ers, the Borjas.

Ferreira contends that the CNMI Supreme Court's decision stripping her of title to the land violated both the equal protection and due process clauses of the Fourteenth Amendment. She claimed that the Court engaged in a legal sleight-of-hand to take the land away from her and return it to the Borjas.

At the Ninth Circuit, Special Judge Edward King agreed with Ferreira that the resulting trust doctrine had no applicability here. He argued that the proper test for whether a particular land sale violated Article XII is whether it gives an excessive long-term interest in the land to a non-Northern Marianas person.

Judge King said that courts should "scrutinize carefully any transactions entered into by a non-Northern Marianas person to determine whether the transaction would result in acquisition of a long-term interest by a non-Northern Marianas person, or in having the land pass out of the hands of the people of the CNMI".

The Court ruled that even if Ferreira and her partner did intend to create a resulting trust in favor of partners not of CNMI descent, their actions would not have created a resulting trust because the transactions would have an illegal purpose-avoidance of the land alienation restrictions of Article XII.

They said that the Common-

vacate[illegible]e judgment of the CNMI Supr[illegible]ourt.

[illegible]ecision which was passed by the Supreme Court agrees with the Ninth Circuit decision and in a separate judgment by Chief Justice Dela Cruz, he said that "all fee title and interest in the land at issue, legal and equitable is quieted in the name of the plaintiff, Diana C. Ferreira."

According to Theodore Mitchell, attorney for the defendant, the decision of the Supreme Court completely nullifies Article XII. "Because of this decision, they can go find any Chamorro, buy the land, sign the deed and the real owner can control the agreement," he said.

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Land: Decision reversed

Continued from Page 1

extend the 55-year lease for an additional 35 years makes Diamond Hotel's lease of the property a violation of Article 12.

The Superior Court sided with Elizabeth Matsunaga's argument, and in 1993, declared the entire Diamond Hotel lease agreement void.

Diamond appealed in commonwealth Supreme Court.

The Supreme Court last week reversed the Superior Court's 1993 decision.

Diamond had plans to develop the two-hectare land into a multi-purpose commercial center, or make it an extension of the e isting hotel.

Prior to the case, the land w temporarily used as a housi site for the hotel's non-reside workers.

Diamond Hotel owners a happy about the outcome of t case, Lizama said, but the ho is not rushing to resume plans develop the property.

Landowner Elizabeth Ma sunaga might decide to eleva the case to the Ninth Circu Court of Appeals. She has days to do so.

If that happens, both sides a in for another long wait.

A recent commonwealth Supreme Court opinion of a case involving Diamond Hotel Co. has cleared an Article 12 issue that may have also caused other Saipan hotel owners to worry about their land leases.

The Jan. 19 ruling said Diamond Hotel's 55-year lease of two hectares of land near the hotel site in Susupe is valid, even if a provision in the lease agreement extends the lease for 35 more years, if the law changes to permit a term that long.

Article 12 of the Northern Marianas Constitution limits persons not of Northern Marianas descent to a 55-year lease.

The Supreme Court said that the provision to extend the lease to 35 years violates the constitution, but the agreement was written in a way that the extension provision can be severed to save other portions of the lease.

Juan T. Lizama, counsel for Diamond Hotel, said the opinion was the first from the Supreme Court that says a questionable portion of a lease can be severed.

"It clears another important issue of Article 12," Lizama said.

The Hotel Association of the Northern Marianas and the Saipan Bankers Association submitted written arguments in support of Diamond Hotel's contention that the portion of a lease agreement that violates Article 12 can be severed.

The outcome of the Diamond Hotel case is welcome news for hotel owners. According to the Diamond Hotel attorney, provisions to allow leases beyond 55 years in case of a change of law, "is pretty common," in hotel land leases.

Diamond Hotel initiated the court action to clarify its leasehold right to the property in 1992, when big businesses such as Pacific Islands Club and Duty Free Shoppers were hit with Article 12 cases.

Hotel Nikko was sued for an alleged Article 12 violation as well, and the case is still pending.

Diamond Hotel leased the property from Manases B. Matsunaga in 1986.

When Manases Matsunaga died, his sister Elizabeth Matsunaga, inherited all rights and title to the leased premises.

The Matsunaga sister contended later that the option to

See LAND, Page 4

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Focus
On the Commonwealth & Micronesia

Upcoming events. —Page 8

Article 12 tops convention priorities

by GAYNOR DUMAT-OL
Daily News Staff

Article 12 of the Commonwealth of the Northern Mariana Islands Constitution is expected to be on top of the issues list of many candidates seeking delegate seats for the third constitutional convention this year.

Some want the constitutional provision that restricts land ownership to North-ern Marianas descendants clearly defined, others would move for certain exemp-tions, and at least two candidates want to be delegates to try to block Article 12 changes.

"I have heard of a move to change Article 12 and this is a no-no," candidate Luis S. Camacho said. "I will do all I can to stop this."

Camacho is required by law to go on administrative leave from his post as management officer at the CNMI Personnel Office during the campaign.

Another convention aspirant, lawyer Juan T. Lizama, said he is for the retention of Article 12, but he wants sections of the law clearly defined to lessen lawsuits.

Convention delegates, he said, must address "problem areas" in the law.

Assistant Public Defender Gregory Baka wants an Article 12 amendment to allow U.S. citizens of non-Northern Marianas descent who are registered to vote in the commonwealth, to own residential land.

Baka agrees that Article 12 serves a valuable purpose in preventing the commonwealth's scarce land resource from being bought up by outside investors, but said allowing U.S. citizens to own land, on which they could build their houses, won't hurt.

Luis M. Mendiola, another convention hopeful, has also issued a statement saying he will fight against any move to repeal or amend Article 12, if elected as a delegate.

Lawyer Kenneth Govendo is also among convention delegates who have expressed views this early, for the retention

❑ See CANDIDATE, Page 4

Candidates: Candidate seeks to protect beachfront land

❑ Continued from Page 1

of Article 12.

But a more important issue, according to Govendo, is the need for a constitutional provision that would preserve public beachfront land on Saipan.

Govendo said a constitutional provision is needed so that the people are the ones who will decide through an election about further use of public beachfront land.

The current system allows the governor and or the legislature to approve land leases of prime beach front land.

Govendo cited the World Corporation lease of a significant part of Pau Pau Beach, as among public land leases that were made without much discussion with the public.

More than 20 people have so far filed for petitions to run for a delegate seat.

Executive Director John Diaz of the Board of Elections expects more convention aspirants to beat the deadline which is three days from today.

More than 100 people have picked up forms for candidacy, Diaz said.

Those who have filed their candidacy:

- Luis S. Camacho- management officer at the CNMI Personnel Office
- Roman C. Benavente
- Luis M. Mendiola- community service worker at the office of the Governor
- Frank G. Cepeda- community leader, war veteran
- Benigno M. Sablan- cabinet secretary, for the Department of Lands and Natural Resources
- Lucy Palacios Webb
- Jerry P. Crisostomo- deputy director at the Department of Public Safety during the Guerrero administration
- Victor B. Hocog- Gov. Froilan C. Tenorio's representative in Rota and new chairman of the Commonwealth Ports Authority board of directors
- Judy I. Pangelinan
- Martin DLG San Nicolas of Tinian
- Linda T. Cabrera
- Justo S. Quitugua- deputy director for administration at the Public School System until his retirement in December
- David Q. Maratita
- Melvin O. Faisao
- Lawyer Kenneth L. Govendo

MARIANAS VARIETY 1/30/95

US Supreme Court denies Mitchell appeal request

By Rafael I. Santos
Variety News Staff

THE U.S. Supreme Court has refused to grant attorney Theodore R. Mitchell a permission to file an appeal in an Article XII case involving Marian Aldan-Pierce and his client, Leocadio C. Mafnas.

A notice sent by the highest court to the Ninth Circuit Court in California indicated that Mitchell's petition for a writ of certiorari has been denied. The decision was entered by the Supreme Court on January 17.

Carlsmith lawyers who are representing Aldan-Pierce were not immediately available for comment. Other Saipan attorneys said the decision meant that "the Mafnas case is finished." However, Mitchell said the battle is far from over.

"It's starting all over again," Mitchell told the Variety yesterday afternoon. "We will ask the Superior Court to reopen and re-examine the 1986 judgment of Judge Robert Hefner [in which we lost]," he said.

In the same judgment, Hefner ruled in favor of plaintiff, Aldan-Pierce, saying there was no constitutional violations. Mitchell said the disputed parcel of land was purchased by Antonia Villagomez, a person of Northern Marianas descent but the money was provided for by two non-NMDs, namely, Randall Fennell and Brian McMahon.

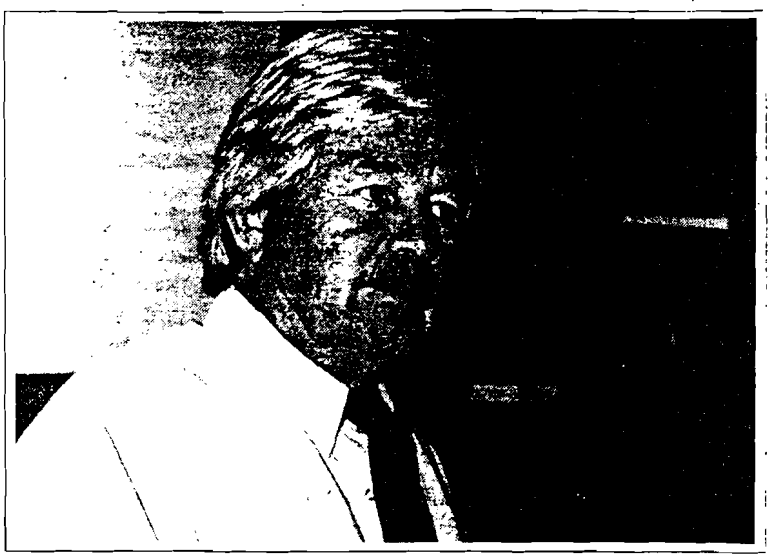
The rights to the property, which was purchased in 1986, were later transferred to Aldan-Pierce.

Mitchell appealed the commonwealth court decision in the appellate division of the U.S. District Court which later affirmed the judgment. The case was elevated to the Ninth Circuit Court only to be withdrawn by Mafnas following the creation of the CNMI Supreme Court.

Asserting that it had jurisdiction over the case, the new Supreme Court heard the matter and ruled in favor of Mitchell. The decision was however reversed by the California Court.

Mafnas' petition for writ of certiorari was denied this month.

Mitchell expressed disappointment with the denial. "We're disappointed with the Supreme Court decision," he told the Variety. "The odds are very much against us," he added, noting that of the more than 6,000 cases elevated to the Supreme Court, only about 85 of them were entertained.



Theodore R. Mitchell

Article 12 lawsuit filed against Millard

ANOTHER article 12 lawsuit was filed last week in the Superior Court, bringing to about 20 the number of cases filed by persons of Northern Marianas descent who want to take back land acquired by others through sale or long-term lease.

The latest complaint was filed on May 20 by Saipan resident Rosa C. Tudela against IMS Associates Inc., a company formed in California which engage in real estate transactions in Saipan.

Also named defendants in the complaint were Barbara Millard, president of IMS at the time of the transaction; her husband William Millard, chairman of the IMS board; Vicente T. Torres, a Northern Marianas descendant; and Saipan Investment Corp.

Tudela wants to take back a 14.5-hectare parcel of land in Papago, Saipan.

Like in several other article 12 suits filed earlier, Tudela asked the court to declare that the sale of the land on April 5, 1986 to Torres was void because the buyer, who is of Northern Marianas descent, was allegedly a front.

The money used by Torres to acquire the property came from the Millards, according to the complaint filed by lawyer Anthony Long.

Succeeding transactions involving the Papago land are also void because the initial transaction violated article 12, the suit says.

Neither the Millard couple nor IMS could buy land because they are not of Northern Marianas descent. Article 12 of the Constitution allows only persons of Northern Marianas descent to buy land or acquire a lease longer than 55 years.

Persons who are not of Northern Marianas descent can obtain land leases up to a 55-year period but the Supreme Court has ruled that if another person is used as front, the lease could be invalidated.

The suit also claims that IMS is a "sham" corporation allegedly organized by the Millards "for the purpose of conducting real estate transactions in violation of Article 12."

Two weeks after Tudela sold the land to Torres in April 1986, Torres and IMS executed a 55-year lease agreement.

In September of the same year, IMS assigned its right, title and interest of the property to Saipan Investment Corp. which, according to the suit, is also a "sham" corporation. (GLD)

JMV

Duty Free faces Article 12 suit

By Gaynor Dumat-ol

ANOTHER Article 12 suit has been filed with the Superior Court, this time against Commonwealth Investment Co. (CIC) and Duty Free Shoppers Ltd.

Saipan resident Joaquin LG Tudela alleged in the suit that the purchase by CIC of his land along Beach Road in 1984 was void because it violated Article 12 of the Constitution.

Article 12 restricts ownership of land only to persons and corporations of Northern Marianas descent. CIC, according to the suit filed Dec. 3, was not of NMI descent.

DFS, also not of Northern Marianas descent, provided CIC with the money to purchase the 929 square-meter property on Oct. 4, 1984 for $169,050, the suit alleged.

The property was leased by DFS three months after it was bought from Tudela.

The suit said majority of CIC's voting shares were not held by persons of Northern Marianas descent.

The voting stocks of CIC, the suit said, were in two types— Class A and B.

A certain John Monteiro was the only class B holder with 45 percent of the total voting strength, the suit said.

The remaining 55 percent of the voting strength, said the suit, was divided among class A holders Marian Aldan Pierce, Manuel Cruz and Lino Fritz.

Fritz is of Palauan descent and cannot be considered of NMI descent under the Constitution, the suit said.

Because all of the B shares which has 45 percent of the voting strength and one-third of the class A shares which has 55 percent of the voting stock are held by persons not of Northern Marianas descent, a total of 63.33 percent of CIC is not owned by NMI descendants, said the suit.

The suit also said that at that time the land was bought, only two of the four directors of CIC board were of NMI descent.

Tudela further alleged that the land sale was initially void because, at the time of the purchase, CIC was a "constructive trustee for DFS Ltd."

"All lands owned by CIC in the NMI were either leased to DFS or at the disposal of DFS," the suit said.

DFS, the suit said, has become majority shareholder of CIC with 95 percent of all outstanding shares.

The president of DFS, according to the suit, is also president of CIC.

Majority shareholders and directors of CIC, said the suit, are employees of DFS.

"DFS and CIC have commingled corporate funds," the suit said.

The plaintiff said the identity of CIC and DFS "is so substantial that CIC should not be considered a separate legal entity from DFS, and that DFS, rather than CIC, was true buyer of the property," the suit alleged.

Tudela asked the court to issue a judgment declaring that leases, deeds or other transactions concerning the land and entered into by the defendants be declared void.

MARIANAS VARIETY NEWS AND VIEWS-TUESDAY-MARCH 30, 1993

Article 12 as important as food, water

Dear Editor:

Article 12 of the CNMI Constitution is a crucial to the livelihood of the people of the Commonwealth as water and food. It was set up, not as a xenophobic measure against outsiders, but as a move to preserve our land and our culture.

However, I make no apologies for those anti-development zealots. The whole anti-development sentiment contradicts human progress: things are changing and developing, and have been for a long time in Micronesia. This is called the signs of the times.

Contrary to popular belief of non-locals, Article 12 can be helpful to potential developers in that it gives them insight into the importance local people place on local values, culture, and the like. In this respect, I agree with Senator Demapan who recently visited our school and gave us his views on this and other matters.

In conclusion, let me just say: preservation and development do not necessarily have to conflict with one another. When they are blended in just amounts, balance and prosperity may result.

Sincerely,

/s/J. Concepcion

Marianas Variety News & Views

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Hillblom faces suit over land

By Gaynor Dumat-ol

AN ARTICLE 12 case was filed yesterday by a person of Northern Marianas descent who wants to get back a 1.7-hectare land in Saipan where a huge house occupied by businessman Larry Lee Hillblom is located.

Mary Ann S. Milne filed the complaint in the Superior Court through counsel Theodore Mitchell.

Milne also asked the court to declare that Hillblom and San Roque Beach Development Co. Ltd. have no right to the improvements in the property.

The suit says Hillblom developed the property, landscaped it and constructed a huge house for his use. A smaller house is located in the property where lawyer Bruce Jorgensen allegedly lives.

The suit alleges that Hillblom used a front company to purchase the land from Milne in 1985 because the businessman is not of Northern Marianas descent.

Article 12 of the Constitution restricts permanent ownership and leases that go beyond 55 years, to persons or corporations of Northern Marianas descent.

In January 1985, San Roque Beach Development purchased the real property from Milne by means of a quit claim deed, the suits says.

Milne said the money used to buy the land was Hillblom's.

Milne claimed that although San Roque Beach Development Corp. was formed in Saipan, exists under CNMI laws and has principal place of business in Saipan, the firm was a "mere sham."

San Roque Beach Development Co. was organized and operated "as the alter ego" of Hillblom, "..for his personal benefit and advantage, for the purpose of circumventing the land ownership restrictions of Article 12 of the Commonwealth Constitution," Milne said.

When the property was acquired from Milne, Hillblom controlled and determined actions of all of the nominal members of the board of directors and all of the nominal shareholders of San Roque Beach Devt., she said.

The firm's directors and shareholders allegedly served as Hillblom's agent.

According to the complaint, because the cost of preparing the site, landscaping it and construction of the house is a substantial sum, Hillblom should have inquired whether or not the title to the property was secure.

"Hillblom knew or reasonably should have known, prior to developing the property and prior to constructing his house on the property, that the plaintiff could assert a plausible legal claim...," the suit says.

The complaint says that Hillblom will not be entitled to restitution for improvements made in the property should he lose, because improvements were made allegedly "with full knowledge of the potential Article 12 claims of the plaintiff."

The construction of Hillblom's house in the land was done "without color of title and not in good faith," the suit says.

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Wabol sued for breach of contract

TRANSAMERICA Corp., which was recently evicted from a piece of land along Beach Road, has filed a lawsuit against land owner Concepcion S. Wabol for breach of contract.

Transamerica claimed it had the right to continue occupying the two adjoining lots based on 55 year leases signed by the company and Wabol in August 1991.

In its complaint filed on April 1, the company asked the Superior Court to declare the new leases as valid.

According to the suit , Wabol accepted partial payment for the new leases in the form of a two-bedroom house worth $18,500 which was built in another Wabol property in Chalan Kanoa.

Wabol, 37, signed a memorandum of agreement within the same month the leases were allegedly agreed, which gave Transamerica authority to build the two-bedroom house as part of the lease payment, the suit said.

However, Wabol allegedly refused to accept the $96,990 remaining cash payment for the land.

Transamerica placed the amount in a trust account. It asked the court to order Wabol to accept the payment.

The company said Wabol committed breach of contract by verbal and written threats, refusal to accept the full payment for the leases and by asking the Superior Court to authorize her to possess the property where Transamerica operates a construction supplies store. It is also the location of Transamerica's offices, warehouse and ho ; facility for 40 workers.

Transamerica has occupied the property for several years and has made substantial improvement to the property, the suit said.

Less than two weeks ago, Wabol took over possession of the adjoining properties after the Superior Court issued a writ of possession.

The writ of possession was issued at least three months after the US Supreme Court upheld Article 12 of the Northern Marianas Constitution which restricts permanent ownership and leases covering more than 55 years only to persons or corporations of Northern Marianas descent.

Philippine Goods, the first company which leased the Wabol property in 1978 and which is not a person of Northern Marianas descent, acquired a total lease term of 50 years when the maximum lease period at that time was 40 years.

Transamerica sub-leased the property when it first occupied the place about eight years ago.

The writ of possession issued to Wabol ejected Transamerica from the disputed site within hours following the lower court order.

On Thursday morning, the Supreme Court ordered that Transamerica be allowed to continue occupying the property pending decision by the high court of the company's appeal.

Transamerica claimed that Wabol's breach of contract resulted in the loss of revenues and disruption of the company's business. It could completely destroy the plaintiff's business, Transamerica said. (GLD)

League of Voters against Article 12?

Dear Editor:

Just a word of caution to the indigenous Chamorros and Carolinians that the League of Voters is a first step toward the demise of Article 12. This organization is just a disguise for the purpose of doing away with Article 12.

Thank you.
Sincerely,

/s/Raymond S. Camacho

MV
6/11/93

Superior Court asked to disqualify law firm

THEODORE Mitchell, who represents landowners in some court cases, has asked the Superior Court to disqualify Carlsmith law office from defending corporations and individuals in three so-called Article 12 lawsuits.

Mitchell said that under this arrangement one defendant's interest is placed over another defendant's interest.

Carlsmith, on the other hand, said a person has the right to waive conflicts in a case and several defendants may agree to be represented by one law firm for a consolidated defense.

Mitchell and Marcia Schultz, representing Carlsmith law firm, presented their positions in court Wednesday.

Castro

Presiding Judge Alex Castro said he would take the issue under advisement and would issue a written decision. (NL)

Mitchell pursues Article 12 conspiracy

By DAN PHILLIPS
Daily News Staff

Revealing who is really behind three taxpayer-initiated lawsuits involving the interpretation of Article 12 of the Commonwealth Constitution has become an obsession for Ted Mitchell.

Mitchell, who represents most of the people who have filed lawsuits in an effort to regain valuable land that was involved in questionable transactions, is convinced that the three taxpayer cases were filed as a litigation tactic to sabotage his Article 12 cases.

The three cases are aimed at properties already targeted in cases filed by Mitchell on behalf of previous landowners.

One involves the Pacific Islands Club, while another involves the Duty Free Shoppers store in Garapan. The third involves beachfront property in San Roque.

Mitchell has even invented a nickname for the cases, calling them them clones because the legal contentions made in all three complaints match one another almost word-for-word.

The lawyers representing the taxpayers, however, contend that the cases were filed in an effort to get an important legal issue addressed as soon as possible.

At issue is Section 6 of Article 12, which addresses property transactions made by corporations.

The clone cases allege that when corporations are found to be found engaging in land deals violating Article 12, the properties involved are forfeited to the commonwealth government, pursuant to Article 12, Section 6.

Mitchell, however, said the government can only get the land if the corporation was qualified to own land when it bought some real estate, then later became disqualified due to changes in its corporate structure.

The three cases were dismissed in March when the Marianas Public Land Corp. stepped forward and said it would press the issue in the previously existing Article 12 cases filed by Mitchell.

MPLC has yet to do so, however, bringing on the possibility that the clones will be revived.

Michael W. Dotts, the lawyer representing Mariano Taitano in the taxpayer case involving PIC, said getting the issue interpreted by the courts as soon as possible is the overriding concern.

That won't happen for awhile, however, as Mitchell and a number of other lawyers are locked in a controversy over who is really behind the taxpayer cases and who should pay the escalating legal bills involved in the cases.

Still no link to Hillblom

Mitchell has said he believes Saipan millionaire businessman and special judge Larry L. Hillblom is behind the cases.

Although the three cases have been dismissed, the Superior Court has given Mitchell the chance to hunt for who is behind the cases.

He has yet to establish a link to Hillblom, but some fascinating connections are emerging.

COMMONWEALTH FOCUS, Friday, June 11, 1993

On Tuesday, Mitchell appeared before Judge Miguel S. Demapan to ask that lawyers James E. Hollman and Bruce L. Jorgensen be found in contempt of court for allegedly evading Mitchell's efforts to question them in depositions.

Hollman and Jorgensen are representing Lorenzo M. Ayuyu in the cases involving the Duty Free store and the San Roque land.

After a heated argument, Demapan ordered Hollman and Jorgensen to cooperate or face disciplinary action.

Mitchell said documents obtained so far in the deposition process have unearthed a payment scheme that suggests "a conspiracy involving at least seven lawyers."

He said that the evidence shows that Hollman, Jorgensen, James Maher and Mitchell Thompson from Guam, Dotts, Bob O'Connor and David Banes have all been collaborating on all three clone cases since at least December 1992.

Mitchell said Jorgensen claimed to be the mastermind behind all three complaints and that after Jorgensen wrote the complaint for all three cases, all seven lawyers then worked on the cases.

Inferring some sort of cover-up in paying for the work on the cases, Mitchell said he has traced a payment system that goes from O'Connor to Maher and Thompson, then to Jorgensen and Hollman.

Mitchell on witch hunt?

Dotts told the court that the cases were his idea and that Mitchell was on a witch hunt for Hillblom, something that the court shouldn't condone.

It was O'Connor's idea to file the cases as taxpayer-based, then Taitano asked to be involved after being part of a discussion on the issues, Dotts said.

When O'Connor's office was too busy to handle the Taitano case, it hired Maher and Thompson as lead counsel, he said, adding that Maher and Thompson then chose to hire Jorgensen and Hollman to draft the complaint.

Hollman said it only made sense for the lawyers involved in the three cases to cooperate, since the cases shared common issues and procedural problems.

At the hearing, Hollman also made several references to how abusive Mitchell is in deposition interviews. Mitchell countered by saying that court rules provide for protection when such abuses take place, while Demapan urged all parties to remain civil and professional.

Dotts said Mitchell also represents Marianas Public Land Trust, which is supposed to represent the public's interest.

However, Mitchell's interest in the Article 12 cases compromised his ability to represent MPLT and made the taxpayer-based cases necessary, Dotts said.

Hollman said he is being driven out of business by Mitchell's chase of Hillblom, while Dotts said he believes Mitchell may be on the hook for all of the legal fees incurred in the quest for Hillblom if no actual link is established.

Report: Court wrong on Article 12

By DAN PHILLIPS
Daily News Staff

Current problems related to the Interpretation of Article 12 of the Commonwealth Constitution are all due to decisions handed down by the Commonwealth Supreme Court, according to a report completed by a Saipan Chamber of Commerce subcommittee.

Based on that argument, the subcommittee is urging the Legislature to step in to resolve the problems brought on by lawsuits claiming violations of Article 12.

The report, compiled by the land problems subcommittee that is below the Chamber's economic development committee, states that the Supreme Court's decisions are responsible for placing "investors at risk of losing millions of dollars in investments made in good faith."

The subcommittee also clearly takes the position that the Article 12 problems are having far more impact on the commonwealth's economy than are problems associated with the management of public land.

Explaining the landmark Aldan-Pierce v. Mafnas decision, the subcommittee noted that the court found that "where an 'outsider' provides the purchase money to a person of Northern Marianas descent to acquire land, and in exchange receives a 55-year lease, a 'resulting trust' arises involuntarily in the outsider, giving the outsider an 'equitable fee interest' of indeterminate duration."

The report does not directly say the Supreme Court is wrong, but it does say that the court "ignored the plain language of the title documents, ignored hundreds of years of common law principles which are applicable in the CNMI, and ignored extensive consititutional and legislative history."

In addition, the subcommittee questions the integrity of Supreme Court Associate Justice Ramon G. Villagomez, noting that he participated in the Aldan-Pierce decision despite the fact that his mother-in-law had filed an Article 12 lawsuit aimed at the Hotel Nikko.

Subcommittee Chairman Tony Pellegrino signed the report and noted input from subcommittee members David Nevitt, Bertha T. Camacho, Rep. Francisco DLG Camacho, Jim Dennis, Patrick Leon Guerrero, Mike Schadeck, Dennis Yoshimoto, Cindy Camacho and Judy Daniel.

Although the report also addresses concerns about the handling of public land by the Marianas Public Land Corp., the subcommittee mostly focused on Article 12 problems.

Article 12 limits ownership and long-term interests in commonwealth real estate to people of Northern Marianas descent. People of non-Northern Marianas descent can only lease land for up to 55 years.

Interestingly, the subcommittee welcomed Nevitt's input, but not input from any of the lawyers representing parties who are claiming Article 12 violations. Nevitt has been actively involved in the defense of the Article 12 claims.

Ted Mitchell, the leading Article 12 claim lawyer, said that if the Legislature acts on the issues meant to be resolved in the courts, it would be a fundamental violation of the separation of powers doctrine.

The subcommittee noted that the Article 12 cases involving allegations of violations by corporations have yet to be decided.

In addition, the subcommittee's report says, "It is encouraging to see that the Legislature has several bills pending before it (about the Article 12 issues). Hopefully, they will act swiftly on them and not drag their heels, as they are so notoriously known to do at times."

However, in a different part of the report, the subcommittee also says it "hopes to stimulate an objective and realistic dialogue of the problems."

MPLC work called 'commendable'

The subcommittee, in looking at public land, said it believes MPLC "is doing a commendable job," particularly with homestead programs, but also pointed out many pending problems associated with MPLC's management of public land.

"The problems that do exist in the MPLC are minor compared with the major benefits it gives," the report says, noting resource restraints placed upon MPLC.

Among the problems associated with public land management are:

- nfrastructure not being put into place at homestead sites.
- Some people have unfairly acquired lots to which they were not entitled.
- Concerns that large-scale leasing of public land to developers will greatly reduce the number of lots available for homesteading.
- Land exchanges not being handled fairly and swiftly enough.
- Confusion and unnecessary hardships caused by not having land properly surveyed before leasing to private developers.
- The lack of an overall plan for public land distribution.

The subcommittee also opposes the transfer of public land adminstration from the autonomous MPLC to the executive branch of government, saying that such a transfer would probably make the existing problems more complex instead of solving them.

Not wishing to offer proposed solutions to what are perceived as being political problems, the subcommittee said it "did not find anything drastically wrong with the system. It felt that the problems are basically internal and do not affect the island economy as deeply as . . . the problem with the definition of Article 12."

MV
6/21/93

Carolinian leaders demand hearing on Article 12 bill

FIVE prominent members of the Carolinian community trooped to the Legislature Friday complaining about possible Senate action on an Article 12 bill, without the benefit of a public hearing.

The scheduled special session, wherein Senate Bill 8-124 was calendared for second and final reading, was canceled and reset to a later date, but the group had plenty to say about the manner the indigenous population are being left out from commenting on the very touch issue.

"We went here because we are upset to learn that SB 8-124 is calendared for final action today. We demand that public hearings be held first before any bill at all regarding Article 12 is acted on," said Lino Olopai, spokesman for the group.

The group, composed of Olopai, Lou Limes, Abel Olopai, Rafael Rangamar and Rokoucho Billy, asked the senators to defer action on the bill until public opinion is solicited.

Sen. David M. Cing responded to the group's concern and issued a call for more public input on the matter, which he called a "far-reaching issue that affects nearly everyone in the Commonwealth, one way or the other."

In a letter to Senate President Juan S. Demapan, Cing questioned why SB 8-124 was calendared for second and final reading without sufficient public input. He said the bill was originally scheduled for a public hearing before, but such hearings were canceled.

SB 8-124, authored by Sen. Paul A. Manglona sought a ceiling in the fees paid to lawyers in Article 12 cases and a provision that would compensate any developer (who is a losing party in a Article 12 case), for any development he made on the land that was being sought back by the original indigenous landowner.

"Article 12 is such a sensitive issue, so caution should be exerted. In fact there is a need for more public education on this issue. What the bill is attempting to do is circumvent the intent of the land alienation provision," Olopai said.

He referred to the bill as the end of Article 12, if ever is sees enactment into law.

"I you put a limit on fees, attorneys may be discouraged from taking up Article 12 cases. We believe Article 12 should be left untouched as is because it is working. We are urging the defeat of the bill and public hearings on any bill at all about Article 12," Olopai said.

Under Article 12 of the Constitution, acquisition or permanent and long term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent only.

This means the most any foreigner can get here in terms of real estate interest is a 55-year maximum lease of land.(RHA)

Property ownership legislation scheduled

By DAN PHILLIPS
Daily News Staff

SAIPAN — No session did not mean no action yesterday for the Senate, which scheduled a public hearing to address legislation involving Article 12 of the Commonwealth Constitution.

The hearing is set for June 29 at 10 a.m. It will be held in the Senate chamber.

A frenzied lobbying effort made by a group calling itself "Carolinian leaderss" seemed to put a movement to pass the bill on hold, as the group demanded a public hearing.

There has yet to be a public hearing in the Senate or House, where a similar bill was introduced.

Only Senate Pres. Juan S. Demapan and Sens. Paul A. Manglona, Edward U. Maratita and David M. Cing showed up for the scheduled session.

Senate Bill 8-124 addresses many of the concerns created by a number of lawsuits that claim violations of Article 12.

Article 12 restricts ownership and long-term interests in commonwealth real estate to persons of Northern Marianas descent, who are defined in Article 12. The bill would reverse the Commonwealth Supreme Court's landmark ruling in the Aldan-Pierce v. Mafnas case.

In that case, the court found that where a person of non-Northern Marianas descent provided money to a person of Northern Marianas descent for the purchase of property, the purchase violated Article 12 because a "resulting trust" was created in favor of a person not qualified to buy the land.

$3-million land case settled

By DAN PHILLIPS
Daily News Staff

SAIPAN — Pacific Islands Club is no longer threatened by litigation involving Article 12 of the Commonwealth Constitution, thanks to a $3-million settlement.

The settlement, agreed upon Friday, was made public yesterday. It came at a time when Domingo and Lourdes Cruz awaited a Superior Court decision on their claim that a San Antonio property being leased by PIC's parent company was acquired from the Cruzes in 1978. The claim was through a transaction that violated Article 12.

Ted Mitchell, the lawyer representing the Cruzes, said the entire $3 million will be paid by First American Title, the company that provided title insurance coverage for the disputed property.

PIC, which will be getting a new 55-year lease, ended up paying nothing because First American insured the property and was bound to pay the legal fees incurred in defending the lawsuit, he said.

Jim Dennis, PIC's general manager, previously said the Article 12 case prevented the resort from proceeding with expansion plans.

> 'This was the case where the Cruzes received $300,000 in cash inside of a Kentucky Fried Chicken bag.'
>
> — TED MITCHELL
> *Saipan attorney*

Mitchell said the $3 million will be shared by the Cruzes and South Seas Corp., one of many companies that held title to the disputed property since the questionable transaction took place.

He would not, however, disclose how the settlement money will be divided or what arrangements were made with regard to legal fees. "It's nobody's business," he said.

The property in question was leased by the Cruzes to South Seas in 1974, but the lease was terminated, and the land was sold to Joaquin Villanueva in 1978. Mitchell said South Seas bought the land, but took title in Villanueva's name.

After several more transactions, the title ended up in the name of Terra Firma, Inc., in 1984. In 1987, G.A. Pacific Development Corp. leased the land from Terra Firma.

G.A. Pacific later changed its name to Interpacific Resorts (Saipan) Corp., which owns PIC.

"This was the case where the Cruzes received $300,000 in cash inside of a Kentucky Fried Chicken bag from Joaquin Villanueva in June 1978, then later learned that the money was provided by some Japanese," Mitchell said.

Manglona proposes speedy action on Article 12 problems

CURRENT problems with regards to Article 12 should be addressed with dispatch to keep investor confidence in the Northern Marianas, Sen Paul A. Manglona said yesterday.

Manglona made the statement as he defended the merits of Senate Bill 8-124 which seeks to ease current apprehension and confusion on the land alienation provision of the Constitution.

"Recent interpretations of Article 12 have caused serious economic problems in the CNMI. Land prices have dropped by about 50 percent in the last two years. Investors are afraid to lease land because they cannot be sure if there will be an Article 12 problem with the land. I am sure everyone agrees we have to do something to address these concerns," he said in an interview.

According to Manglona, investors who are already here and who are involved in Article 12 lawsuits are concerned because they could lose their land and get no reimbursement for the money they spent.

He said there is also a concern that unscrupulous attorneys may be taking advantage of persons who bring Article 12 lawsuits by charging them exorbitant fees.

"The problems do exist. As elected representatives, it is our job to deal with them," Manglona said.

Article 12 of the Constitution restricts land ownership to persons of Northern Marianas descent.

Foreigners, including developers and investors, may get a maximum of 55-year lease.

According to Manglona, SB 8-124 could clear up the current problems on the restriction.

He cited the following:

•First, it sets a cap on attorneys fees to 20 percent of the value of the land or $700 per hour, whichever is less. This is to let honest lawyers their profit but prevent them from taking advantage of their clients.

•Second, it assures that a person who loses land because of an Article 12 decision will get back the money he spent on the land. Thus, if the buyer has built a hotel or other building on the contested land, he may get back his investment if the land is lost to the original owner.

•Third, it clarifies how to deal with the "resulting trust" doctrine, which, Manglona said, the Supreme Court used to cancel some land transactions. According to the Rota senator, this is the doctrine that says, "if you buy land with somebody else's money, the land does not belong to you but to the person who provided the money."

"This bill will bring good faith in all land transactions in the Commonwealth. By passing SB 8-124, we'll be sending the message to developers that the CNMI is a safe place to invest," Sen. Edward U. Maratita said.

He said the bill will not only be fair to developers, it will also protect the interest of even the landowners themselves.

"We're seeing to it that everyone, both the developer and the landowner, is protected from the probable circumvention of such a restriction. We do not want the developer and the landowner to be taken advantage of," said Maratita. (RHA)

Paul A. Manglona

Article 12 generates hot debate

By DAN PHILLIPS
Daily News Staff

SAIPAN — Emotions and complicated issues electrified a Senate hearing yesterday, addressing legal issues surrounding Article 12 of the Commonwealth Constitution.

A crowd that spilled out the doors of the Senate chamber listened to and offered testimony on a Senate bill that proposes guidelines for judges interpreting Article 12.

Article 12 restricts land ownership in the Commonwealth of the Northern Mariana Islands to people of Northern Marianas descent. That restriction has been in the news, as several lawsuits have been filed claiming the article was breeched by prominent developers.

Northern Marianas leaders are rushing to do something to stabilize the economic crisis created by the uncertainty surrounding litigation involving alleged Article 12 violations.

Following the Senate's public hearing, Acting Gov. Benjamin T. Manglona met with legislative and business leaders to discuss the issue.

On Monday, Manglona said it doesn't matter so much where the solution comes from, but that something must be done, soon, to restore the shaken confidence of investors who want to do business in the Commonwealth.

Adding fuel to the fire is a statement made by Hotel Nikko, Saipan, last week — that the hotel and Japan Airlines would leave Saipan if the Nikko loses an Article 12 lawsuit involving the land upon which the hotel is built.

Testimony offered at the hearing, however, suggested that a quick solution to the problem may not be possible.

While some argued that the problem should be left to the courts to decide, many supported the proposed legislation, which would set a statute of limitations for Article 12 claims, provide for compensation to the losers in Article 12 cases and restrict attorneys' fees involved in such claims.

Serafin Dela Cruz, of Tinian, had a different idea, however, suggesting that a proposal should be put together, then submitted to the voters for their consideration.

Dela Cruz also said that he believes nothing short of repealing Article 12 altogether will really solve the problems.

Many of the arguments at the hearing boiled down to the legal practice of claiming Article 12 violations in an effort to remedy allegedly dishonest and deceptive land transactions.

Ramon Mafnas said that there are other legal remedies available for going after real estate brokers if they deceive landowners.

Mike Dotts, a lawyer involved in some of the Article 12 cases, said anyone who believes he was taken advantage of by a land broker has several legal remedies, including actions for fraud and undue influence.

Ted Mitchell, who is prosecuting most of the Article 12 lawsuits, said that there is no easy way to resolve the legal mess created by illegal deals.

He also said that the only way to handle the problems is in the courts.

Should the legislation be enacted, it is certain to be challenged in court and the existing problems will only be prolonged for another 4-5 years, Mitchell said.

One Saipan resident, Jireena Blas, suggested requiring the claims be subjected to review by an impartial arbitrator before they can be taken to court.

Sen. Paul A. Manglona of Rota, who sponsored the Senate's Article 12 bill and who chairs the Senate Resources and Development Committee, halted yesterday's hearing before its completion, promising to schedule another public hearing at a location capable of accommodating the large number of witnesses.

Senate panel opens Article 12 hearing

THE SENATE Committee on Resources, Development and Programs will conduct hearing today on a bill which protects developers who lose lawsuits related to Article 12 of the Constitution.

Senate Bill 8-124, authored by Sen. Paul A. Manglona, will be the topic of discussion during the public hearing which is expected to draw a big crowd.

SB 8-124 imposes a ceiling on fees charged by lawyers on landowners seeking recovery of their land.

The bill also provides restitution to losing developers.

SB 8-124 also requires Article 12 litigants to file their claims within six years.

Among the individuals, organizations, agencies and businesses asked to testify were the attorney general, Marianas Public Land Corporation, Saipan Chamber of Commerce, Saipan Bankers Association, CNMI Contractors Association, Hotel Association of the NMI, CNMI Bar Association, mayors of Saipan, Rota and Tinian, prominent businessman Larry Hillblom and 16 lawyers practicing in the CNMI, including Ted Mitchell, David Nevitt, Vicente Salas and Anthony Long.

Notably missing in the witnesses list are individuals who may have been affected by Article 12, and those who have pending interests in any Article 12 cases.

"We are not impressed with the way the public hearing is being held because the indigenous people of the Commonwealth are not represented by anyone called in to testify before the Committee," said Lino Olopai, a spokesman for a group of Carolinians.

According to Olopai, the witnesses list consists of lawyers, businessmen and organizations that "are inclined into supporting the measure being discussed."

"We were expecting to see representatives of indigenous groups in the list. Its puzzles me why the likes of Special Assistant for Carolinian Affairs Rokoucho F. Billy, Resident Executive for Indigenous Affairs Victorino Cepeda or Women's Affairs Special Assistant Malua Peter were missing," he said.

According to Olopai, it is unfair for the Committee to just invite those witnesses who are likely to support the measure.

Olopai went to the Senate yesterday demanding that the Committee issue a subpoena to key Article 12 protagonists whose insights may be considered invaluable in the deliberations on the controversial land restriction provision of the Constitution.

This was to ensure the attendance and participation of those key figures in today's discussion.

Among those he wanted subpoenaed were Hillblom, Mitchell and Nevitt.

"These people are the experts in Article 12. By just sending them invitations, they may opt not to appear in the hearing. By subpoenaing them, we can be assured of their input in the proceedings. This is important since their absence would defeat the purpose of the hearing," Olopai said.

Olopai, who spoke in behalf of the Carolinian community, said he totally disagrees with the intent of the bill.

He said that limiting lawyer's fees and setting up a statute of limitations would hamper the prerogative of local landowners to make their own choices with regards to their interest on their land.

The restitution provision in effect suggest that the land restriction provision of the Constitution may continuously be abused by non-NMI persons or investors, he said

"By protecting the developer, we are promoting the abuse of Article 12. I believe Article 12 should remain as is to deter investors from circumventing our land laws," Olopai said. (RHA)

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End to Article 12 problems?

Mitchell says bill unconstitutional

SENATE BILL 8-124, which limits lawyer's fees in land cases and provides compensation for losing developers, is unconstitutional, lawyer Theodore Mitchell said yesterday.

"The bill is unconstitutional and opens up the possibility of further litigation. When passed, we will have no choice but to attack the statute on constitutional grounds," Mitchell said during a public hearing conducted by the Senate Committee on Resources and Development.

He referred to the bill as an attempt to defeat all pending and all future Article 12 claims as well as an attempt to usurp the authority of the Judiciary.

Mitchell is counsel for complainants in at least 13 Article 12 cases, notably Wabol v. Villacrusis; Aldan-Pierce v. Mafnas; Ferreira v. Borja; Dela Cruz, Chong v. Hotel Nikko Saipan; Milne v. Hillblom.

In a written testimony, Mitchell said the Legislature has no power to interpret the Constitution, this being the function of the Supreme Court under the doctrine of separation of powers.

He said it is not up to the lawmaking body to rewrite Article 12 as it has been developed by the Supreme Court in a recent ruling which defended the intent of Article 12, which is to restrict land ownership to persons of NMI descent.

Lawyer Rexford Kosack, on the otherhand, said it within the authority of the Legislature to alter or clarify the common law doctrine of resulting trust by statute, hence, there is no violation of separation of powers.

"The bill does not affect, change or modify Article 12. There is nothing constitutionally required in trust law, so there is nothing unconstitutional in changing or clarifying it," he said.

He urged the bill's immediate passage "before irreparable harm is done to the reputation of the Commonwealth."

Those who opposed the bill said there is really no problem with Article 12 unless people start unless people try to circumvent it.

"The measure appears to be an attempt to save the hotel companies from the legal consequences of their illegal land transactions, when it is obvious that it is not Article 12 which causes the hotels any problems, it is the fact that some of the hotel development companies violated it. If they did not, they would have no problem whatsoever today," Mitchell said.

"What this bill is seeking to do is to make a deal, a deal. I do not understand why people who sold their property at fair market price can in fairness and good conscience now claim that the sale should be canceled because they did not know where the money came from," Rota resident Lorenzo M. Ayuyu said.

He lauded the Senate for coming up with a measure that would help restore decency in Article 12.

"This is a step in the right direction," Ayuyu said. "Prevent greedy attorneys from charging excessive fees - these same attorneys who, by their own greed, have encouraged our people to forget about honesty, turn against each other, and try to ignore what they are trying to do to the economy and our world-wide reputation." (RHA)

Spread of Article 12 epidemic

MV
7/9/93

Dear Editor:

All of a sudden there seems to be an outbreak of Article 12 epidemic and it is spreading very fast at such an alarming rate. It also seems that the major part of Article 12 epidemic is not coming from within but from outside the CNMI. I cannot help but offer some assistance in confining Article 12 epidemic from spreading.

I would like to comment on two subjects before I offer my assistance. First: Comments made by Toshimi Yoshida (Marianas Variety 3/04/93) who is the president of the Hotel Association of the Northern Mariana Islands (HANMI). Second: Senate Bill No. 8-124 and House Bill No. 8-235.

I. a. Mr. Yoshida mentions millions of dollars CNMI lost when the two (2) Hotel projects were canceled. He failed to mention how much the two hotels would have made given the 95 percent tax rebate that all the developers/investors (rarely local) now enjoy. Are the two hotels he mentioned owned or partly owned by local Chamorro/Carolinians? How about the 15 hotel members of HANMI? How many are owned by local Chamorro or Carolinians? Not part owners, but owners?

b. Mr. Yoshida mentions that last year the nine largest hotels in Saipan employed 2,350 people. Mr. Yoshida failed to mention how many of those employed by the nine largest hotels in Saipan are Chamorro or Carolinian. How much of the 95 percent tax rebate that these hotels (developers and investors) get goes back to the Chamorros or to the Carolinians? How many hotels, golf courses, garment factories, night clubs, etc. would be enough to accommodate local people, their visitors, and their rate of (development) growth? We need to develop but not the kind or type of developers that get rich overnight at the expense of the local Chamorros and the Carolinians. I strongly, believe we should cancel more hotels. Perhaps, including the 15 hotel members of HANMI.

c. Mr. Yoshida said that "We (the 15 HANMI members) must ask the government to take some action or no one will come here in the future." Do you readers really believe that no one will come here and invest, help us develop, because of Article 12? This is an insult to all of us who voted "yes" for our Covenant, especially insulting to those who negotiated for Article 12. To our present governor who chaired the first Constitutional Convention and especially insulting and degrading to the US delegation who approved Article 12. This is nothing but a scam to change the intention of Article 12, and to undermine our leaders. It is the worldwide economic recession that we are experiencing at this time. Not Article 12.

d. Mr. Yoshida suggested some

I disagree with Senate Bill No. 8-124 and House Bill No. 8-235. It seems that the motive behind both bills is to protect the intent of Article 12. None of that shows in either bill:

II. a. Both bills do nothing but give more protection to developers than to the local land owners. But giving them that protection (both bills) will only continue to encourage developers, as well as locals, to disregard, disrespect, criticize, abuse, etc., the intent of Article 12. This abusive epidemic of Article 12 must be stopped.

Both bills are not addressing that. We need some sort of development and we are looking, and we welcome the kinds or types of developers that are sensitive to the local people, toward their language, culture laws and equally important, their environment, etc., and who will include these as part of their development.

b. Both bills also discourage other law firms from accepting Article 12 litigation by setting limits on their salary. We are very fortunate that Ted Mitchell's and Jean Rayphand's law firm continue to stand and protect Article 12 issues despite all odds. Not to mention personal attacks on them. Both should be commended. I am also very suspicious as to why other law firms are very reluctant to accept Article 12 lawsuits. Perhaps our government, through the Attorney General Office, should take a firm stand and protect the intent of Article 12 issues.

c. The five board members suggested in House Bill No. 8-235 that will address the Article 12 issue are just too expensive. Their salary as suggested in the bill may be anywhere from $40,000 to $70,000. Not only is it too expensive, but it will reduplicate what our judges are now doing. It also seems that the five board members are not going to

Let me offer the following suggestions to confine the Article 12 epidemic.

1. Leave Article 12 as it is.
2. Make it a criminal offense for any person/persons to try to circumvent Article 12.
3. Make it a law that all land transactions, legal or illegal, be diverted back to the original land owners after all losses, monetary or otherwise, have been recovered.
4. The only time the land should be turned over to the government is when no heirs, family, relatives, etc. can be found.

/s/Lino M. Olopai

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Friday, July 9, 1993
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Focus
On the Commonwealth & Micronesia

Article 12 hearing set for Thursday

Land: Questions remain

By DAN PHILLIPS
Daily News Staff

A new date has been set by the Senate for a public hearing to address legislation proposing guidelines for the interpretation of Article 12 of the Commonwealth Constitution.

After ending a June 29 public hearing early because the crowd was too large to fit inside the Senate chamber, the Senate's Resources and Development Committee yesterday announced that the next hearing will be on Thursday at 9 a.m. in the Convention Center on Capitol Hill.

Sen. Paul A. Manglona, the committee's chairman, is apparently ready to bring up new issues at the hearing, including recent court actions involving the Marianas Public Land Trust and its lawyer, Ted Mitchell.

Mitchell, who represents several individuals attempting to regain land through lawsuits that allege violations of Article 12, is being charged by opposing lawyers with sacrificing the public's interest in order to advance his own cases.

The controversies involve three taxpayer-filed cases claiming that disputed land should end up with the government, not the original landowner, should the courts rule that an Article 12 violation occurred. The three cases involve the same land at issue in three previously filed lawsuits.

Mitchell has argued in court hearings that there is no conflict because there is no legal basis to [illegible] contention that land involved in the three cases should be forfeited to the government.

All three cases have been dismissed, but have been kept alive to allow Mitchell to pursue his theory that the taxpayers named were only used by other unnamed parties in bringing the lawsuits.

He said the lawsuits were created by a group of lawyers and that the taxpayers, Mariano Taitano of Saipan and Lorenzo M. Ayuyu of Rota, agreed to let their names be used.

Manglona questioned the ongoing activities in the three cases in a letter he wrote Tuesday to Fi-

☐ See LAND, page 4

Land: Questions remain

☐ Continued from page 1

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Manglona questioned the ongoing activities in the three cases in a letter he wrote Tuesday to Finance Director Eloy S. Inos, who is also the chairman of MPLT.

> 'This appears to be an attempt by the senator to improperly interfere with litigation pending before the Superior Court.'
>
> — TED MITCHELL, *attorney*

The letter makes an "official demand" on MPLT to explain what has been going on in the three cases.

Manglona said the matter was brought to his attention at the June 29 public hearing.

At that hearing, he asked Inos, "How can MPLT see fit to have [illegible] mation might provide Senate members with information relevant to various topics likely to be discussed during the Senate public hearing scheduled to commence on July 15."

MPLT finance any attempt to have post-dismissal monetary and related sanctions imposed upon Ayuyu, Taitano and their attorneys, as a result of their willingness to initiate legal proceedings to protect the very ... public interests which MPLT failed to protect?"

The senator also demanded an accounting of MPLT's legal billings in time for the public hearing, saying that the information "might provide Senate members with information relevant to various topics likely to [illegible] at a court hearing on Wednesday, when another lawyer, Bruce L. Jorgensen, produced a copy.

Inos and Manglona were unavailable for comment on the letter. Mitchell said he would talk to Inos as soon as possible and that "this appears to be an attempt by the senator to improperly interfere with litigation pending before the Superior Court."

He also said that the first sign of the existence of the letter came at a court hearing on Wednesday, when another lawyer, Bruce L. Jorgensen, produced a copy.

MVIC 1, 3-15/93

LETTERS TO THE EDITOR

Confused about Article 12

Dear Editor,

PLEASE publish the following testimony submitted on June 29, to the Senate public hearing regarding Article 12 remedial legislation.

My name is Herminia Blanco Matsumoto Fusco. I was born in Saipan, I am of CNMI descent, and with the exception of a few years during and after college, I have spent my life here. Like most people here my husband and I are not real estate wheeler-dealers. We simply go to work everyday, pay our bills, try to save a little and work at building a secured future for ourselves and a daughter. I am not involved in Article 12 litigation and hopefully I never will be. Nonetheless, since these Article 12 cases started I have become very concerned about my family's future.

Lawyer Ted Mitchell said recently on Saipan Cable TV Forum that "all of the Article 12 cases are now out in the open and there will not be any more." This is not true and he knows it.

Any piece of or property in the CNMI that has ever been sold can be questioned as to the source of the buyer's money. Any piece of property that is acquired by an indigenous person who has a non-indigenous spouse can also be questioned.

I have worked continuously for since I married my husband 19 years ago, and at times I have made more than him. Do I have to maintain a separate bank account for my savings in case I ever want to buy a piece of property?

If I don't, what is to stop someone from saying I was controlled by my husband (a non-indigenous) or used his money? Is a woman of CNMI descent who is a housewife less intelligent than one who chooses to work outside of her home? Is Mr. Mitchell or our courts going to administer IQ tests and conduct financial audits of all local people to determine if they are mentally and financially competent to make wise business decisions? We never fail to remind the US government what a responsible and mature group of people we are.

Part of being responsible and mature is a willingness to live with the decisions you have made -- even the bad ones.

I do not feel our court's interpretation of Article 12 are going to protect the majority of our local people. On the contrary, those lucky enough to avoid Article 12 litigation are going to face a devastated economy. Some say that the management of Nikko Hotel is bluffing about pulling out of Saipan if they lose their hotel and Mr. Mitchell calls it economic blackmail.

Do we expect that after encouraging Nikko to build their hotel we can take it away from them, not to give them back the money they spent on the land and improvements, and they will bow down and thank us and ask if they can please continue doing business here? The Japanese certainly aren't that dumb. Are we?

A $100-million investment may seem like a lot to us, but it wouldn't buy one 747 airplane. Japan Airlines can walk away from Saipan slightly poorer but quite a bit wiser, and I wouldn't blame them at all if they did.

Saipan is not the only island in the world with white sandy beaches, although it sometimes seems that think it is.

Sure, the twisted logic of our courts and Mr. Mitchell may create a handful of new local millionnaires. But what happens when the new Rolexes and Toyota 4-Runners wear out?

The economy will be in shambles, and those with the job skills or financial resources will move to the US mainland. Those that don't can content themselves with farming, fishing, and food stamps or perhaps work in the garments factories.

Mr. Mitchell would not care. By then, our judges would not care either. Anyway, they will continue to receive their $100,000 plus yearly salaries.

I cannot understand how anyone with even the slightest amount of morals can fault this bill. Is it unreasonable to expect someone to at least return the money and pay for the improvements on land that they happily sold but now want back?

Is it unreasonable to expect a lawyer to be satisfied with their standard fees, which are now in the range of $150 per hour.

I urge you to do what you know is right. The interpretations of Article 12 by our courts and Mr. Mitchell are wrong, immoral, self-serving and embarrassing.

If there are loopholes in Article 12 that need fixing, then remedy the unreasonable provisions. But do not penalize the hundreds of people, both local and outsiders, that stand to be hurt simply to satisfy the few who have sold their "precious" land once and who will sell it again as soon as they get the chance.

Sincerely,
/s/Herminia M. Fusco

Carlsmith stays on Article 12 case

Superior Court Presiding Judge Alex Castro yesterday denied lawyer Theodore Mitchell's motion to disqualify the Carlsmith law firm from representing defendant in Article 12 cases.

Castro denied Mitchell's motion for his failure to show how Carlsmith's representation would interfere with the defendants rights to a fair judicial proceedings.

The Carlsmith law firm is representing six corporations and 37 individuals in three lawsuits. Realty Trust Corporation owned by lawyers Jack Layne and Roger Gridley have been named as a defendant in the three cases.

Mitchell argued that under the arrangement, Carlsmith's law firm is representing multiple clients who may have potentially adverse interests.

According to Castro's ruling, no conflict of interest will arise from the arrangement between Carlsmith and its clients since no prior attorney-client relationships existed between the plaintiffs named in the lawsuit and the lawyers of the law firm.

Castro ruled that lawyers undertaking the representation are responsible for resolving questions on conflict of interest.

The decision cited one of the rules of professional conduct which limits an attorney's standing to ask for the disqualification of opposing counsel on the basis of conflict on interest.

Under the rule, disqualification can be made only when the opposing lawyer demonstrates "personal detriment or misconduct which taints the fairness of the proceeding."

The ruling further stated tha limitation not only minimizes number of instances where the qualification motions are use harrass the opposing party but protects the rights of clients to ch their counsel of choice. (TMF)

Mitchell

PDN 7/16/93

Hillblom sues Mitchell, claims extor

By DAN PHILLIPS
Daily News Staff

SAIPAN — Another chapter in an ongoing feud between Saipan businessman Larry H. Hillblom and attorney Ted Mitchell unfolded Wednesday as Hillblom filed a federal lawsuit accusing Mitchell of attempted extortion.

In the past, Mitchell allegedly kept threatening Hillblom over his attempts to get Mitchell disqualified in a pair of land disputes involving Hillblom.

In one of those cases, a taxpayer-based civil suit that claims Hillblom was involved in a land deal that violated Article 12 of

COURTS

the Commonwealth Constitution, Mitchell is trying to establish that Hillblom, not Lorenzo M. Ayuyu, was the driving force behind the case against Hillblom himself. If this is true it will sidetrack Mitchell's case.

A link to Hillblom has yet to be established.

In this latest chapter, Hillblom's charges, filed in Saipan's U.S. District Court, allege that Mitchell

violated the Racketee Corrupt Organizat scheming to hurt Hil utation and financial

According to the la by Saipan attorney Pierce, Mitchell sa case is an effort by l destroy me with a l rassment suit."

In the suit, howev claims it is Mitchell volved in a "concert to discredit Hillblom

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1993 Marianas Variety

Article 12 crisis remains

E LEGISLATURE has the au-
rity to resolve the current dis-
e on the Supreme Court's in-
retation of the constitution's
d alienation clause.

ccording to University of Cali-
nia law professor Edward
bach, Jr., it is important for
Legislature to find a remedy
he Article 12 crisis.

The Legislature should decide
at role it will play in coming
with the remedy to Article 12.
clear that the court's decision
sed uneccessary turmoil. The court has made a mistake. Anything the Legislature can do to simplify the court's job is a useful function," Halbach said.

In his testimony during yesterday's public hearing conducted by the Seante Committee on Resources and Development on Senate Bill 8-124, Halbach said the CNMI Supreme Court misapplied the doctrine of resulting trust when it rendered its decision on the Aldan-Pierce versus Mafnas lawsuit.

In the Aldan-Pierce versus Mafnas case, the court said Article 12 was violated when a person of Northern Marianas descent purchased land using the money of a person who is not of CNMI descent.

He said the doctrine could be used as a last resort if the court fails in determining the objectives of the parties involved in the litigation.

According to lawyer Theodore Mitchell, it is the duty of the CNMI Supreme Court to determine the outcome of Article 12 cases.

Mitchell said the Manglona's proposed measure will take away the real intent of the CNMI's land alienation provision - to protect the land for the indigenous population.

Lawyer Rex Kosack, however, said the proposed measure would not destroy Article 12's intent but, will only change the CNMI's trust laws.

Manglona's bill seeks to set the parameters for the CNMI's court's interpretation of the Article 12 provision. The bill seeks to redefine the resulting trust doctrine and proposes to set a cap on attorney's fees as well as provide compensation for losing developers.

Several alternatives to the proposed Article 12 measure were also presented to the committee during yesterday's public hearing.

Aside from correcting the mistake brought about by the CNMI court's interpretation of the Constitution's Article 12 provision through legislation, the Senate Committee was also urged to place the issue on the ballot through a popular initiative.

Business leaders who testified during the hearing said Manglona's proposed measure will help the CNMI regain its economic stability. Duty Free Shoppers General Manager Playford Ramsey said the bill will remedy the current Article 12 crisis.

Florence Kirby, who spoke on behalf of the Carolinian community, said the bill reiterates the enforcement provision of the Article 12 provision and safeguards the integrity of the CNMI as as a good investment site.

While the Saipan Chamber of Commerce issued a unified position to support Senate Bill 8-124, Chamber President Roy Morioka also asked the Committee to re-examine the merits of the bill before recommending for its passage.

Morioka said the Legislature should carefully review its position on the application of the resulting trust doctrine. He said changes on the law's application would lead to continuing litigation.

Former lawmaker Serafin Dela Cruz said a popular initiative will be the ultimate remedy to the Article 12 issue. Dela Cruz said letting the voters decide on the issue will prevent the matter from being contested in court.

Others who testified during the hearing blamed Lawyers, realtors and unscrupulous businessmen involved in previous Article 12 transactions as the culprits behind the rash of land alienation lawsuits pending in court.

Former Chief of Police Jose M. Castro said the lawyers who cheated local landowners should also be named as litigants in Article 12 cases.

WYER Theodore Mitchell shows "secret document" regarding alleged
rmaly in land transactions during public hearing at the Convention
nter yesterday.

FORMER Governor Carlos S. Camacho holds dollar bill to emphasize his point.

Report on Article 12 bill finished

THE SENATE Committee on Resources, Development and Programs has completed its report on Senate Bill 8-124 which provides guidelines for Article 12 cases, Senator Paul A. Manglona, the bill author, said Wednesday.

"We have completed the task of incorporating all comments we gathered on the bill," he said in an interview. "The package is now being circulated among our members for final review prior to making our recommendations to the full Senate."

The committee held two well-attended public hearings on SB 8-124. Manglona expressed optimistic it would be endorsed by the six-member committee.

"I have to be optimistic that this bill will go through because I believe in the merits of the bill" he said. "We all know we have a problem with Article 12 and it is the Legislature's duty to do something about such concerns."

Sen. Edward U. Maratita, chairman of the committee, cited the need to provide solutions to uncertainties caused article 12.

"It is because of this need that I personally support the measure on the committee level, based on the pros and cons we have so far heard on the issue. But of course anything can happen on the Senate floor when all nine members have to cast their vote on the very important legislation," Maratita said in a separate interview.

SB-124 limits attorney's fees on Article 12 cases and requires land claimants to pay losing developers for buildings and other improvements in the property. The bill also places a shorter period within which Article 12 claims may be filed.

Article 12 allows only persons of Northern Marianas descent to own land in the CNMI.

Hotel Nikko Saipan and its parent company, Japan Airlines Development Corp. earlier said they wou leave Saipan if they lose their Arti 12 cases in court.

The two companies fear that th may lose their hotel to the Camac sisters, former owners of the la where Nikko is located. The ho is worth $60 million to $100 m lion.

Nikko and JAL have been lobb ing for SB 8-124, particularly cause of the provision on restr tion.

FORUM

What is your opinion about the bill that calls for a limit an attorney can get out of a real property (land) case?

"THE LEGISLATURE... finds that there exists the possibility of exploitation by, or unjust enrichment of, attorneys who represent parties in real property cases alleging violation of Article XII of the CNMI Constitution. The Legislature finds that a reasonable statute of limitations would go far towards restoring confidence in the title of lands and property in the CNMI."

Section 4917 paragraph (d) states that "A contingent fee in a case involving real property never in any case exceed either: (1.) 20% of the fair market value of the real property; or (2.) the amount of time in hours spent by the attorney or personal representative on the case multiplied by Seven Hundred Dollars ($700) her hour.

FRANK VILLANUEVA
Department deputy chief
"I think they should put a limit on attorney's fee to a certain maximum, something that is very reasonable."

STEPHEN SMITH
High School teacher
"Seven hundred dollars an hour or twenty percent of a court award; it is not, "enough" pay for a lawyer. It is ten times too high! ... [It] will earn these jokers $50,000 a year... twice what I make, and I'm worth more than they are."

CURT KLEMSTEIN
Cameraman
"It is a means to close the loopholes some people have taken advantage of... It is a deterrent."

NAME WITHHELD
College student
"The attorneys involve in Article XII are only concerned with making themselves millionaires. They don't care about getting the land back to the local people. It's all a matter of greed."

'They can't take away my home'

Victim of Article 12 lawsuit speaks out

WHEN KEN AND CONNIE Coward came to Saipan in 1983 from Guam, they had one thing in mind, to be stable, have a peaceful life and settle on the island.

Ken was invited by then Lt. Governor Pedro A. Tenorio to work here and to head the maintenance department of the Department of Public Works. Connie, who lived much of her life on Saipan, left Guam, went back here with her husband and reside here permanently.

But, of course, to realize this dream, they have to build their own house, and they need a land in which to place it upon.

While housed in one of the government quarters Ken happened to meet then Federal Judge Alfred Laureta in 1988, who offered him a parcel land. The piece of land on Capitol Hill was part of an ammunitions dump during the war.

Ken said he was convinced to buy the land when the original owner, Jess Santos, who sold the land Hedwig Hofschneider, refused to take it back. Hofschneider, a local guy, had a warranty deed with Santos for the land. He then leased it to the outgoing Judge Laureta for 55 years.

When Santos refused to take back the land, Ken thought there was a gentleman's agreement and everything was okay. So he prepared his $22,500 to buy the 2,500 square meter lot and put the land in Danny Villagomez's name, another local person, because Article 12 of the CNMI Constitution bars anyone other than those of NMI *descent to own land.*

"So nobody owned the land except local people," Ken said, while explaining that the transfer of land was done under legal terms.

After acquiring a 55-year lease from Villagomez, Ken started to clear the area to build his dream house, which would be his gift to his wife. He had to haul 400 dump truck loads of earth to level the land and also had to build his own water catchment since there was no water service in the area at the time. "This was a garbage ammunition dump (and the back side) is jungle. So I took a bulldozer to level the area," Ken said, who did most of the work by himself.

Then lightning struck, leaving an Article 12 lawsuit filed against him, his wife, Judge Laureta, Hofschneider and Villagomez in March 1989. The suit was filed by Jose C. Mafnas, (currently a high-ranking official at the Customs Division), who is seeking that the court voids the land sale of Santos to Hofshneider, because, according to the complaint, the money Hofschneider used to buy the land was not his and was Laureta's. The same thing happened when the land was transferred to Villagomez's name, using Cowards' money, which was translated by Atty. Theodore Mitchell as a violation of Article 12.

Mafnas claims to have a deed of sale on the same piece of land, which was sold to him by the Santos.

Despite the pending lawsuit, Ken said he continued building on the land. "I'm committed to live here. I had no plans to go anywhere." Although the lawsuit affected *him and his wife* mentally, he dismissed the thought and continued with their lives. "The case was like a big cloud hanging over us, but I decided that the cloud is not there," Ken said.

He also assured himself that: "I have a 55 year lease with a local (and) nothing in the constitution prevents me from doing that."

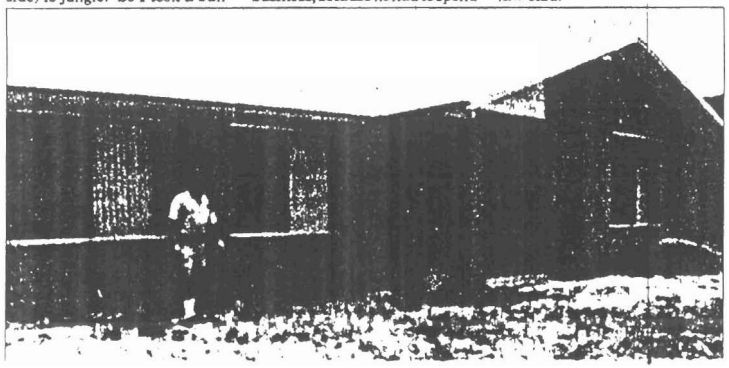
Again, despite the lawsuit, he invested all his money to build his dream house. He also sold his interests from a boat chartering business, because he had to spend cash. He said he could not get a loan, since he cannot make the land, which is literally not his, as collateral.

In building his house, Ken said he had to ship 22 pallets of bricks to construct the walls. He also said he had to ship, from Australia, four 20-foot containers to assemble his steel kit house. Ken said that with the help of four Filipino workers, he was able to erect the house, which cost him about $55,000, now sitting atop a leveled slope on the hill. It has been their home for about three years for him, his wife and two children.

The Article 12 case they are now facing, which is languishing in the Superior Court, seems to be sailing in rough waters after the Supreme Court decision on the Aldan-Pierce v. Mafnas case . The July 1991 Supreme Court opinion stated, among others, that land sales using other people's money, who are not of NMI descent, is void, a highly criticized decision which has become a very debatable subject among legal experts.

Ken believes that there was something fishy why they ended up having to face the court. He also thinks that those responsible with the case are trying to extort money from other people. Ken is also asking how come Santos can come up with two deed of sales on the same piece of land, one with Hofschneider, the other with Mafnas.

Be that as it may, Ken is optimustic that they won't lose their house. "They can't take away my home," Ken said, "I have my dignity and I did everything that the law said."



M. Variety 8/10/93

Senate likely to approve bill on Article 12 claims

SENATE Bill 8-124, which allows developers to recover investments after losing land through Article 12 lawsuits, is expected to be passed by the Senate soon.

Five senators have signed a committee report in support of the bill.

"The committee report has been signed by five of us. Based on this, it appears sure it will pass the Senate in our next session," said Sen. Paul A. Manglona, the bill's author.

The five senatores are: Edward U. Maratita, Francisco M. Borja, David M. Cing, Juan S. Torres and Manglona.

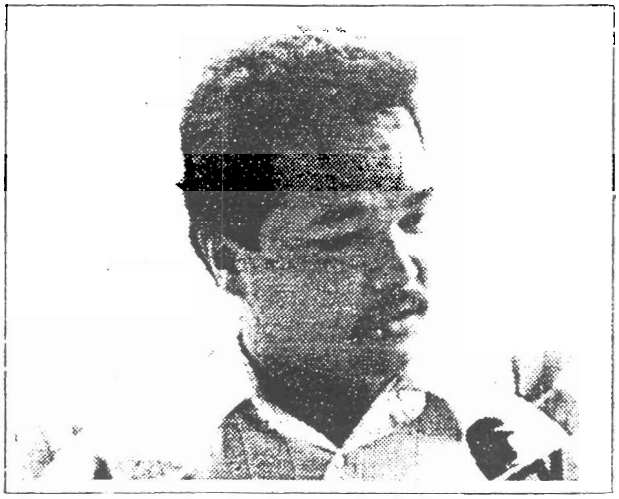
The committee report, which has been forwarded to Senate President Juan S. Demapan, is expected to be presented to the Senate during its session sometime this week.

SB 8-124 puts a cap on attorney's fees for Article 12 claims. It also shortens the period within which land claims may be filed in court.

Article 12 of the Constitution allows only persons of Northern Marianas descent to own land in the CNMI.

According to Manglona, his bill will bring back fairness into Article 12, thereby help erase the negative reputation it has been creating for the CNMI.

"Most of the privately owned land in the CNMI has gone through several transfers of title in the last 20 years," he said. "Since just one transfer is enough to make title questionable, most of the land title in the CNMI is, from an investor's point of view, untrustworthy thereby having an effect on the economy."



Paul A. Manglona

The committee said in its report that economic problems were not the only reason why its members supported the bill.

"There are also fundamental issue of fairness and justice at stake," the committee said. "It is clear from the testimony and other evidence that in at least some cases, innocent persons who acted in good faith are now being threatened with the loss of their homes and their life savings because of Article 12 suits. This is an intolerable situation."

The members also noted that Article 12 had an extremely divisive effect on the island community, where neighbors, friends, and even families have been split "with emotions running high on both sides."

Although the arguments for the bill's passage may be solid, Manglona said he fears that the measure might encounter rough sailing at the House.

He said the bill might sit long at the House committee level due to the sensitivity of the issue and especially since most members of the lower house were seeking re-election.

"What has to be realized is that the bill does not seek to make any amendments on Article 12 or its provisions," Manglona said. "It is the fairness aspect that this bill addresses. I hope that if the bill goes down there (House), people would call on their congressmen to voice their support."

According to the Rota senator, a good majority of NMI citizens are in support of the bill, but are opting not to voice out their sentiments.

He said those in favor of the measure should start talking so their representatives would not get the wrong signal. (RHA)

House passes bill on Article 12 cases

THE HOUSE passed a bill Wednesday to regulate fees charged by lawyers on Article 12 cases.

House Bill 8-295, introduced by Rep. Stanley T. Torres and co-sponsored by 11 other House members, was passed with amendments.

The bill addresses problems brought about by Article 12 of the Constitution.

Article 12 prohibits persons not of Northern Marianas descent from owning land in the CNMI.

"Article 12 cases have been pending in the CNMI for more than five years, causing uncertainty that has affected the economy. One substantial reason for the lack of settlements in these cases is the excessive and unreasonable attorney's fees based not on the amount of work and effort in each case but on the value of land," Mafnas said.

The bill prohibits the computation of lawyer's fees based on a percentage rate applied against the value of the land, and sets up a $700 maximum allowable fee for all Article 12 cases.

The bill allows contingency fees only if a case is won. No such fees are to be required for losing litigants.

The bill, although viewed by the House as a good answer to Article 12 problems, may not be passed by the Senate because it has similar proposal.

Senate Bill 8-124, authored by Sen. Paul A. Manglona, also seeks to limit attorney's fees. It also provides restitution for losing developers.

The Senate bill also provides a shorter time limit for the filing of Article 12 claims.

Senate passes 2 bills on Article 12

TWO BILLS providing guidelines on Article 12 cases were passed by the Senate during its special session yesterday.

With votes of 4-1-1, Senate Bill 8-124 and House Bill 8-295, both setting ceilings on fees for lawyers representing land claimants were approved on final reading. The Senate bill will go to the House while HB8-295 will be sent to the governor for his signature.

Senate President Juan S. Demapan abstained from voting while Senator Jesus R. Sablan cast the dissenting vote.

The other senators present, Paul A. Manglona, Edward U. Maratita, David M. Cing and Juan S. Torres, voted favor of the bills.

"This is a very complex issue to handle," said Demapan in an interview. "I feel the issue should be left to the legal experts, the courts or perhaps to the people of the Commonwealth through a referendum."

He lauded the authors of the two bills for coming up with possible solutions to current problems caused by the controversial constitutional provision.

Article 12 of the Constitution limits ownership of land to persons of Northern Marianas descent.

"We have problems with our land transactions here because we have no way of finding out where the money comes from. Our land title system is unreliable, thereby causing a great deal of uncertainty among our business community," Manglona said in a privilege speech during the session.

SB 8-124, authored by Manglona, limits lawyer's fees, provides restitution to losing developers and shortens the period for filing Article 12 cases to six years.

Th bill was discussed in two public hearings conducted by the Senate Committee on Resources and Development.

According to Manglona, his bill addresses the fairness and justice aspect of the land ownership restriction in the hope that the negative reputation it has brought to the CNMI will be erased.

"A lot of people are thinking we're doing this for Hotel Nikko, PIC, DFS or other investors," he said. "But what they do not understand is that we are just trying to bring justice for those who acted in good faith with their land dealings but are now faced with the possible loss of their homes and lifetime savings."

Torres, who admitted he has some interest in a possible Article 12 lawsuit, said he had something to gain if the Article 12 bill was disapproved.

According to Torres, he had an earlier land deal involving sale of a property to a person whom he suspected to be acting in behalf of a foreign investor.

He said supported the bill because it would put to rest a lot of confusion and grey areas in the controversial provision.

"If I were to follow my personal greed, I could stand to gain if I voted against the measure. But by approving this measure, we are paving the way for a better future for our children.

8/13/93

Senate approves Article 12 bill

PDN 8/13/93 Focus

By DAN PHILLIPS
Daily News Staff

Ending weeks of speculation, the Commonwealth Senate yesterday approved a bill proposing guidelines for the judicial interpretation of Article 12 of the Commonwealth Constitution.

Court rulings in lawsuits alleging violations of Article 12, which prohibits people not of Northern Marianas descent from owning land in the commonwealth, are widely considered as a major factor in the commonwealth's economic slow-down.

With a couple of exhaustive public hearings completed, the Senate felt it was ready to act, in order to get the controversial measure over to the House for consideration.

During yesterday's session, four of the six senators present voted for the bill, while Saipan Sen. Jesus R. Sablan opposed the measure and Senate President Juan S. Demapan abstained from voting.

Rota Sen. Paul A. Manglona, the bill's author, said it was important to act on it because the House is likely to take a long time to consider the proposed legislation.

"I think the people in the House will support it. It is just a matter of how long it will take," Manglona said. "It is a sensitive measure, but it basically addresses the fairness of land transactions in the commonwealth."

He said the bill has been amended to reflect many of the concerns brought up in public hearings and in written testimony.

The report prepared by the Senate Committee on Resources, Development and Programs, which was completed on July 23, said the commonwealth's "land title system cannot now be considered reliable," because documents filed with the Commonwealth Recorder's Office do not show who provided the purchase money for land.

It is the provider of the purchase money that is an important part of the Commonwealth Supreme Court's leading decision involving Article 12, which held that if a person of non-Northern Marianas descent provided the money for a person of Northern Marianas descent to buy land, with the provider of the money getting a lease, then the transaction violated Article 12.

The committee also observed in its report that lawsuits involving Article 12 "have had an extremely divisive effect on our island community. Neighbors, friends and even families have been split. Emotions run high on both sides."

The committee disagreed with the suggestion that the bill is unconstitutional, saying that "it is always in the power of the legislature to enact laws relating to,

❑ See BILL, Page 4

Bill: Emotionally charged issue

❑ Continued from Page 1

empowering, enforcing, clarifying and giving effect to a constitutional provision, as long as those laws do not actually contradict that provision or the intent behind it."

The bill addresses four main issues:

■ Attorneys' fees. With the committee hearing allegations that lawyers are the only ones benefitting from the Article 12-based cases, it has placed limits on the amount of money a lawyer can make in a case involving Article 12.

The bill would limit the contingency fees that could be charged in any case involving real property. The limit would be 20 percent of the fair market value of the property, 20 percent of the amount received by the client for the property or $700 for every hour the lawyer worked on the case. The lawyer would get the lessor of the three options.

Paul Manglona of Rota

■ Equitable adjustment. This section is aimed at making sure that anyone losing his or her land in an Article 12 case is compensated for any improvements made on the land.

All people who must give up land or an interest in land because of a ruling in an Article 12 case would be entitled to compensation from the prevailing party. Such compensation would include the fair market value of the property and any improvements made on the land.

■ Resulting trusts. This would reverse the rationale adopted by the Supreme Court in its Aldan-Pierce v. Mafnas ruling.

Under this section, "Where a transfer of an interest in property is made to one person and the purchase price is paid by another who is not qualified under the Constitution or laws of the Northern Mariana Islands to acquire that interest, a resulting trust does not arise in favor of the person by whom the purchase price is paid."

This section does not block the bringing of legal actions involving Article 12. It just addresses the resulting trust doctrine.

■ Statute of limitations. The committee felt that a six-year statute of limitations for the bringing of alleged Article 12 violations was reasonable. There would be a six-month grace period before the new limit took effect, meaning that violations that happened more than six years ago could be the subject of lawsuits filed during the grace period.

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Article 12 claims to continue

HE NINTH Circuit Court's rul-
g that the CNMI Supreme Court
red in using the resulting trust
octrine in deciding a land dis-
ute does not end cases filed un-
r Article 12 of the CNMI Con-
itution, according to lawyer
heodore Mitchell.

In a press conference yester-
ay, Mitchell said the Ninth Cir-
uit Court "has no business tell-
g the Commonwealth Supreme
ourt how to construe Article
2.."

He said the federal court's rul-
g was an intrusion upon the
ght of the Commonwealth to
overn itself.

Mitchell was commenting on the decision issued by the Ninth Circuit Court on Aug. 19 on the appeal by Diana C. Ferreira following the CNMI Supreme Court's decision to return the parcels of land she bought to the original owner, the Mafnas-Borja clan.

The Commonwealth Trial Court voided the sale, concluding that although Diana held title to the properties, her partners, who are not of Northern Marianas descent, "deemed" themselves to be owners of the land and exercised "control" over it.

The Supreme Court upheld the lower court's decision but used the resulting trust doctrine as basis.

The Ninth Circuit Court said the Supreme Court erred in applying the resulting trust doctrine on the case. According to the federal court, the Supreme Court used its power to create a resulting trust in favor of Ferreira's partners and then used the existence of the resulting trust as a basis for voiding the sale and giving the land back to the Mafnas-Borja clan.

During the press conference Mitchell, who represents the Mafnas-Borja group, said that when the Supreme Court reopens the case he would asked that the agency-trust analysis be used in deciding the case and leave the resulting trust doctrine behind. He noted that he did not use the resulting trust doctrine in pursuing the Mafnas-Borja claim on the parcels of land in San Roque which were sold to Ferreira in 1980, 1982, 1983 and 1984.

Mitchell said it in his opinion that resulting trust was a "self-destructing concoction" used by former Trial Court Chief Judge Robert Hefner in deciding an earlier case against the original owners of land and in favor of persons not of Northern Marianas descent.

He also stressed that the Ninth Circuit Court, in its decision, did not say that the result (the Supreme Court ruling) was wrong; only that the reasoning was wrong.

The federal court also did not say that the only way Article 12 could be violated is if a wrong name is in a document.

Ferreira's lawyers, according to Mitchell, contended that if the name of a person of Northern Marianas descent is in a document (land sale agreement) Article 12 is not violated.

The court should look behind the names, Mitchell said. He said it was his contention that there was an agency-trust arrangement between Diana and her husband Frank.

Frank used his wife's name to buy property and hold it for Frank, the lawyer said. (NL)

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Ninth Circuit Court opinion

CNMI Supreme Court erred

THE NINTH Circuit Court of Appeals has ruled that the CNMI Supreme Court erred in using the resulting trust doctrine in deciding a land claim under Article 12 of the CNMI Constitution.

"The Commonwealth cannot constitutionally deprive a person of a property interest through the expedient of an untenable judicial interpretation of local law that denies that a property interest ever existed," the Ninth Circuit Court said in an opinion dated Aug. 19.

The federal court vacated the local Supreme Court's decision and remanded the case between Diana C. Ferreira against the Mafnas-Borja group for further proceedings consistent with the Ninth Circuit's opinion.

Diana and her husband Frank and James and Barbara Grizzard entered into a partnership on Oct. 21, 1980 to buy and subdivide for resale or lease a parcel of land in San Roque. The agreement provided that the Grizzards would lend $41,000 to the partnership for the purchase of the property. Frank was to contribute $9,000 to cover surveying, subdividing, legal and accounting costs. Diana was to buy the property and lease it to the partnership for 40 years.

The first $41,000 in partnership income, plus interest, was to go to the Grizzards to repay their loan. Further profits were to be divided equally among the partners.

On Oct. 22, 1980 Diana purchased the property from the Mafnas family for $20,000. In 1982, 1983 and 1984 she bought two adjoining parcels from Mafnas for about $80,000 furnished by the Grizzards.

The Commonwealth Trial Court voided the sale, concluding that although Diana held title to the properties, her partners ,who are not of Northern Marianas descent, "deemed" themselves to be owners of the land and exercised "control" over it.

On appeal, majority of the CNMI Supreme Court concluded that because the Grizzards supplied the money, Diana held title to the property as trustee for the Grizzards under a "resulting trust."

Edward C. King, chief justice of the Supreme Court of the Federated States of Micronesia who sit in the CNMI court as special judge, issued a dissenting opinion. He said that although the partnership agreement violated Article 12 by giving persons not of Northern Marianas descent impermissible interests on the property, the court's application of the resulting trust doctrine was improper and the sale from Mafnas to Diana was valid.

"We agree with Judge King that the CNMI Supreme Court's application of the resulting trust theory was untenable," the Ninth Circuit Court said.

It said the purpose of the resulting trust doctrine is to protect pe sons who are the rightful owners land even though they do not ha legal title. Even if Ferreira and t partners did intend to create a r sulting trust in favor of partners t of CNMI descent their actio would not have created a resulti trust because the transaction wou have an illegal purpose - avoidan of the land alienation restrictions Article 12, the court said.

According to the federal cou the CNMI Supreme Court us its power to create a resulti trust in favor of Ferreira's pa ners and then use the existence the resulting trust as a basis f voiding the sale and giving t land back to the Mafnas-Bo clan.

Johnston conditions