

LAW OFFICES
THEODORE R. MITCHELL
 NAURU BUILDING
 POST OFFICE BOX TWENTY TWENTY
 SAIPAN, NORTHERN MARIANA ISLANDS 96950
 TELEPHONE 670/234-9800
 TELECOPIER 670/234-3325
 CABLE MITCHLAW

July 23, 1995
 VIA FAX 670/322-2267

Deanne Siemer, Esq.
 Howard P. Willens, Esq.
 General Counsel
 Third Constitutional Convention
 Commonwealth of the Northern Mariana Islands
 Saipan, MP 96950

Re: Article XII; 7/21/95 Draft

Dear Deanne and Howard:

Yesterday, while the Committee of the Whole took a recess in its discussion of this draft we discussed interpretation of the 1976 version of Article XII. That exchange was prompted by the discussion in the Committee about the differences, if any, between the "voidable" sanction in Section 6 of the July 21 draft and the "void ab initio" sanction of the present Article XII.

I began by complaining to Deanne that during the debate which preceded the recess, she had changed following hypothetical which I had written for Dr. Camacho:

Q: A Japanese approaches a landowner and tells him that he wants to buy his land. The Japanese offers to pay a fair price for the land. The Japanese takes title in the name of a friend of his of Northern Marianas descent. Is that transaction "voidable" under Section 6 [of the July 21 draft]?

Her answer was something very much like this:

Deanne Siemer, Esq.
Howard P. Willens, Esq.
July 23, 1995
Page 2

A: Obviously that question has been written by a lawyer. Let me ask you a question: Is the transaction between two persons of Northern Marianas descent? If so, then there is nothing wrong with it.

I told her that she had taken unfair advantage of her own client when she responded to Dr. Camacho. She said (with feeling): "He's not my client, he's your client." I said: "He's your client, because he's a delegate."

Then, we (the three of us) had substantially the following dialogue:

TRM: Suppose the following hypothetical. Suppose I approach a landowner and tell him that I want to buy his land. I offer him a "fair" price. I tell him that I want the title put in the name of my friend, a person of Northern Marianas descent. The landowner knows everything about the transaction. Does that transaction violate Article XII?

DS: No, why should it? The Northern Marianas landowner understood what he was doing. It was a fair transaction. Why should it be set aside?

TRM: Because I get an equitable fee simple title in the land and that is a freehold interest.

DS: So long as everyone knew what was happening, why should the transaction be set aside?

TRM: In other words, if everyone involved in the transaction knows that they were violating Article XII, then there is no

JUL 23 1995 SUN 3:20
P. 03
-2664-
Deanne Siemer, Esq.
Howard P. Willens, Esq.
July 23, 1995
Page 3

violation of Article XII!

HPW: Your problem is that you think that all of the local people are stupid and that they don't know what they are doing. You think that in every transaction involving a local person, the local person doesn't understand what they are doing. You are wrong.

TRM: That's not true at all. I thought that Article XII was supposed to invalidate the transaction without regard to what the landowner knew or didn't know.

TRM (to Deanne): Suppose an agent (of Northern Marianas descent) approaches a landowner and tells him that wants to buy his land. The buyer is in fact acting for an undisclosed principal. The undisclosed principal is me. The agent does not know of any reason why the landowner would not want to sell his land to me. In fact, the landowner knows me and likes me. Under the common law of agency, there is nothing wrong with an agent buying land for an undisclosed principal. The price is fair. Does that transaction violate Article XII?

DS: No. Do you want me to testify about the real intent of the original version of Article XII?

HPW: And I will show you the negotiating history of the Covenant which refutes your views.

I didn't say it at the time, but I would like to take you both

Deanne Siemer, Esq.
Howard P. Willens, Esq.
July 23, 1995
Page 4

up on your offer. Howard, will you show me that negotiating history? And, Deanne, you have mentioned this before in our several discussions. Please share that part of the constitutional history with me: What was your intent in this regard when you drafted the original Article XII?

Given the fact that the Committee passed the July 21 draft on first reading yesterday and given the very few days left in the Convention, I hope you can get back to me by tomorrow.

Finally, I look forward to the consultations that you spoke about at the Committee meeting yesterday. Surely I am not the unnamed lawyer among all those you have been consulting who nearly exhausted your patience!

Sincerely,

A handwritten signature in cursive script that reads "Ted".

THEODORE R. MITCHELL

faxc: Dr. Carlos S. Camacho
{CONVENT.110}