

LAW OFFICES  
THEODORE R. MITCHELL  
NAURU BUILDING  
POST OFFICE BOX TWENTY TWENTY  
SAIPAN, NORTHERN MARIANA ISLANDS 96950  
TELEPHONE 670/234-8800  
TELECOPIER 670/234-3325  
CABLE MITCHLAW

July 25, 1995  
VIA FAX 670/322-2267

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

Re: Article XII, § 6-Corporate Forfeiture

Dear Deanne:

Forgive me for not noticing this before now! It just dawned on me as I drove to work this morning that I had seen without seeing the following problem with the proposed section 6 of Article XII.

The July 21, 1995, draft deletes the following language from the current version (underscored language was added in 1985):

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 after the effective date of this amendment shall be immediately forfeited without right of redemption to the government of the Commonwealth of the Northern Mariana Islands.

At the plenary session on Saturday, deletion of this provision was explained this way:

If you look at the current Article 12, you will see that we have deleted quite a

Deanne Siemer, Esq.  
July 25, 1995  
Page 2

lot from section 6. This is all language about corporations that was made necessary by the void ab initio rule:

It described what happened when a corporation ceased to be qualified as a Northern Marianas descent person. With the voidable standard, this is not needed.

Journal, p. 2526 (July 22, 1995) (remarks of Delegate Lillian Tenorio).

The purpose of the deleted provision is explained in the Analysis of the Constitution, pp. 179-80 (1976).

In sum, it provided a penalty to cover the case where the Section 5 corporation of Northern Marianas descent is set up, land is purchased by the corporation and then the ownership or the control of the corporation passes out of the hands of the Northern Marianas shareholders and directors who enabled the corporation to qualify to buy land in the first place.

If the corporation buys land while it is eligible to do so, then it loses its eligibility (because the real owners push out or persuade out the Chamorro or Carolinian participants), then the question becomes: What should happen to the title to the land? The answer given by the 1976 Convention was: It should not go back to the original landowner, because the purchase was legal when it was made. Therefore, the title to the land should automatically pass to the government. Analysis of the Constitution, pp. 179-80 (1976).

If this sanction is deleted from Article XII, then the qualifications set forth in section 5 are of no use.

Omission of this provision creates a perfect opportunity for a developer who is not of Northern Marianas descent to form a corporation in cooperation with a couple of persons of Northern Marianas descent who will serve as the nominal majority shareholders and the nominal majority directors, but who in fact are not "actually, completely, and directly" in

Deanne Siemer, Esq.  
July 25, 1995  
Page 3

control of the corporation. Then, after the corporation has purchased the land (and some projects here involve a lot of land), the accommodation shareholders transfer their stock to the developer (who is was the minority shareholder), resign from the board, and the corporation goes its merry way, with its land.

With this provision dropped out, it doesn't matter whether the ownership and control requirement is 51% or 100%.

In fact, an enterprising soul could open a business and make a good living: "Shareholders and Directors For Rent" "Cooperative, compliant and complacent nominees guaranteed" "Reasonable Fees; Confidentiality Assured"

And, once they get their disclosure form printed up they will be doubly sure of not having any problem.

This should do it:

THIS IS AN EXTREMELY IMPORTANT DOCUMENT. READ THIS DOCUMENT 10 TIMES BEFORE SIGNING. WHEN AND IF YOU SIGN THIS DOCUMENT, YOU ARE DEEMED TO ACTUALLY KNOW AND UNDERSTAND EVERYTHING THAT IS PRINTED ABOVE THIS LINE AND IT DOES NOT MAKE ANY DIFFERENCE WHATSOEVER WHETHER YOU ACTUALLY KNOW AND UNDERSTAND IT. YOU HAVE THE RIGHT TO CONSULT AN ATTORNEY OF YOUR CHOICE BEFORE YOU SIGN THIS DOCUMENT, BUT IF YOU SIGN IT WITHOUT INDEPENDENT LEGAL ADVICE, THAT IS YOUR DAMN PROBLEM, NOT MINE. IF YOU SIGN THIS DOCUMENT, YOUR SIGNATURE WILL CONSTITUTE YOUR FULL AND KNOWING CONSENT TO OUR JOINT EFFORTS TO CIRCUMVENT THE RESTRICTIONS OF ARTICLE XII AND IF YOU OR ANY OF YOUR RELATIVES EVER BRING AN ACTION IN COURT TO SET THIS TRANSACTION ASIDE FOR VIOLATION OF ARTICLE XII, YOU HEREBY AGREE THAT THIS DOCUMENT CONSTITUTES A COMPLETE AND TOTAL

Deanne Siemer, Esq.  
July 25, 1995  
Page 4

DEFENSE AGAINST ANY SUCH ARTICLE XII CLAIM. AND, IF YOU OR ANY OF YOUR RELATIVES, OR ANY OTHER AGENT, SUCCESSOR OR ASSIGN OF YOURS BRINGS ANY SUCH ACTION AGAINST ME, YOU WILL BE LIABLE TO ME FOR TEN TIMES THE LEGAL COSTS WHICH I, OR ANY OF MY SUCCESSORS OR ASSIGNS, INCUR IN DEFENDING AGAINST YOUR LAWSUIT.

I find the official explanation (written by you but) given by Delegate Tenorio, to be incomprehensible. We have not seen any explanation or definition of the term "voidable." The conceivable possibilities are quite numerous, let me give you just one:

Developer sets up corporation. Developer contributes all the money and all the expertise. Developer is very smart. Developer is very rich. Developer is like Donald Trump or Leona Helmsley: they like to win, make money and they know best what the world and everyone in it needs, for their own good.

The company is a big success. It builds a beautiful 500 room hotel, a beautiful 500 unit condominium. It builds an 18 hole golf course. It lets the local families use the water features for \$20 bucks, on the weekend. It employs 1000 people, most of them local people. It donates to the Red Cross. It donates to the political campaigns of every representative and senator and the governor. It pays taxes.

It reserves a special parking place for every public servant. It gives special discounts on lodging (for the weekend) and on dining, for all public servants. It gives special discounts on green fees

Deanne Siemer, Esq.  
July 25, 1995  
Page 5

to all public servants.

Then, it buys out its local shareholders and they resign from the board. They do so willingly, knowingly, voluntarily, and the Developer has them sign a form to prove it.

Now, what happens next? Who can sue? The government? The original landowner? If anyone can sue, what relief can they get from the court? Who knows? But let's assume, taking your concept of "fairness" as a guide, that somebody manages to convince the court that he or she or it has a cause of action and they prove that the corporation lost its eligibility. Then what?

This is what will happen: The court will decide that it is in the public interest to let the company keep "its" land. The company is a wonderful neighbor. It pays a lot of taxes. It treats everyone so nicely. It has contributed to the economic development of the island. It make us all proud to be a part of the Commonwealth.

It just wouldn't be fair to take the land away and hurt so many people, after the company bought it, fair and square.

Scale down the magnitude of my hypothetical by degrees and tell me where, short of the tin shack on a house lot, the court's sympathies would shift to the landowner, or the collective, common interest of the people of the Northern Mariana Islands "to preserve the character and strength of the communities that make up the Commonwealth . . . in order to achieve the longer-term economic and social gain that will come from preserving their family and social order, thus protecting the basis for enduring economic growth . . . [because] land is one of the principal sources of social stability." Analysis of the Constitution, pp. 165-66 (1976).

I address these comments to you, as Land Committee counsel, but I would like the to be published in the Convention Journal for the information of all delegates.

Deanne Siemer, Esq.  
July 25, 1995  
Page 6

Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Mitchell', with a long horizontal flourish extending to the left.

THEODORE R. MITCHELL

[CONVENT. 120]