

Notes of Decisions

Generally

The Marianas Public Land Trust has the obligation to safeguard and invest the funds it receives from the Marianas Public Land Corporation. NMI Const. art. XI.
Marianas Pub. Land Trust v. Commonwealth, 3 CR 120 (Trial Ct. 1987).

ARTICLE XII: RESTRICTIONS ON ALIENATION OF LAND

Section 1: Alienation of Land. The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent.

History: Adopted 1978.

Cross References: See article XII, § 2 (defining 'acquisition'), ~~article XII, § 3~~ (defining 'permanent and long-term interests in real property'), and ~~article XII, § 4~~ (defining 'persons of Northern Marianas descent').

Related Commonwealth Code Sections: See 2 CMC § 4941 et seq. (actions concerning article XII); 2 CMC § 4464 (marketability of title); and 2 CMC § 7222 (annual report by zoning administrator of transactions involving persons of non-NMI descent).

Comment: Covenant § 805 provides:

Except as otherwise provided in this Article, and notwithstanding the other provisions of this Covenant, or those provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana Islands, the Government of the Northern Mariana Islands, 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 promote their economic advancement and self-sufficiency:

(a) will until twenty-five years after the termination of the Trusteeship Agreement, and may thereafter, 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; and

(b) may regulate the extent to which a person may own or hold land which is now public land.

Notes of Decisions

1. Generally
2. Constitutional Challenge
--Particular Cases

NMI Const. art. XII implemented this policy.
Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 15, 1995) (Opinion at 5-6).

1. Generally

Restrictions on land alienation imposed by NMI Const. art. XII are intended as a safeguard for the people of the Northern Mariana Islands from losing control over land for a limited period (25 years) during the Commonwealth's transition to membership in the American political family. The policy underlying these ownership restrictions is set forth in Covenant § 805.

NMI Const. art. XII's ethnic-based prohibition on sale and transfer of ownership of land is unique in American jurisprudence. Prohibition was deemed necessary during Commonwealth's transitional years. Covenant § 805.
Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 15, 1995) (Opinion at 6).

Objective of NMI Const. art. XII is to prevent native Chamorros and Carolinians from losing possession of and control over their most precious resource, land. The mechanism for achieving this is by restricting, during the period of protection, the transfer of land ownership and by prohibiting persons who are not of Northern Marianas descent from acquiring more than a 55-year leasehold in Northern Marianas land.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 15, 1995) (Opinion at 5~~5~~6).

The purpose of NMI Const. art. XII is to furnish substantive protection to persons of Northern Marianas descent, to further the preservation of their culture, and to protect the underlying social order of the Northern Mariana Islands. Any agreement by which a person who is not of Northern Marianas descent is given, receives, or obtains a right, conditional or otherwise, to acquire title to or an interest in land greater than a 55 year leasehold would violate NMI Const. art. XII.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 15, 1995) (Opinion at 11~~11~~12).

The sole implementing vehicle for Covenant § 805, requiring that the Commonwealth regulate the alienation of permanent and long-term interests in real property to restrict acquisition of such interests to persons of Northern Marianas descent, is NMI Const. art. XII, which became operative when the NMI Constitution went into effect on January 9, 1978.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

The history of the Constitutional Convention shows that the purpose underlying land alienation restriction was to conserve the land of the Commonwealth for the indigenous people because of its limited quantity. NMI Const. art. XII.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985), *rev'd in part*, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

2. Constitutional Challenge

Plain terms of Covenant § 805 exempt from U.S. Constitutional requirements the Commonwealth's restrictions on land alienation. U.S. Congress was within its power to enact this exemption from U.S. Constitutional requirements. NMI Const. art. XII.

Yokeno v. Mafnas, 973 F.2d 803 (9th Cir. 1992).

U.S. Congress acted within its power in enacting Covenant §§ 805 and 501(b), requiring Commonwealth government to regulate alienation of permanent and long-term interests in real property so as to restrict their acquisition to persons of NMI descent and excusing such regulation from federal constitutional restrictions. Right to acquire permanent or long-term interests in NMI real estate is not fundamental right protected by the U.S. Constitution. NMI Const. Art. XII is not subject to equal protection attack. U.S. Const. amend. XIV.

Wabol v. Villacrusis, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

U.S. Constitution's Equal Protection Clause does not bar the application of NMI Const. art. XII.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 15, 1995) (Opinion at 6).

NMI Const. art. XII, restricting acquisition of permanent and long-term interests in land in the NMI to persons of NMI descent, does not violate equal protection guarantee in NMI Constitution.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

NMI Const. art. XII, restricting acquisition of permanent and long-term interests in land in the NMI to persons of NMI descent, does not violate equal protection guarantee in U.S. Constitution.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

Given the history of occupation by foreigners of the NMI, as well as the scarcity of land and the cultural traditions of the people, Covenant and constitutional provisions which restrict the ownership of land to persons of Northern Marianas descent are rationally related to the unique obligation which the United States Congress owes to the people of the NMI, and therefore, these provisions survive scrutiny under the Fifth Amendment. U.S. Const. amend. V; NMI Const. art. XII.

Wabol v. Muna, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

NMI Constitutional restriction on the alienation of land based on the traditions, the cultures, the importance of ownership of land and the potential for exploitation by more powerful economic sources can withstand scrutiny under the equal protection provision of the Fourteenth Amendment and the restriction is a fair and reasonable

result of the direction and authority of the U.S. Congress. U.S. Const. art. IV, § 3; U.S. Const. amend. XIV; NMI Const. art. 1, § 6.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985),
rev'd in part, 2 CR 963 (Dist. Ct. App. Div.
1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958
F.2d 1450 (1990).

--Particular Cases

In complaint commencing quiet title action, party alleging that NMI Const. art. XII facially violated U.S. Constitution and Covenant lacked standing to claim that NMI Const. art. XII as applied violated federal law, inasmuch as provision had not yet been interpreted and applied to deprive him of right protected by federal law.

Yokeno v. Mafnas, 973 F.2d 803 (9th Cir. 1992).

Section 2: Acquisition. The term acquisition used in Section 1 includes acquisition by sale, lease, gift, inheritance or other means. A transfer to a spouse by inheritance is not an acquisition under this section if the owner dies without issue or with issue not eligible to own land in the Northern Mariana Islands. A transfer to a mortgagee by means of a foreclosure on a mortgage is not an acquisition under this section if the mortgagee is a full service bank, Federal Agency or Governmental entity of the Commonwealth and does not hold the permanent or long-term interest in real property for more than ten years beyond the term of the mortgage.

History: Adopted 1978; amended 1985 by Amendment 34. The second and third sentences of this section originally provided:

A transfer to a spouse by inheritance is not an acquisition under this section. A transfer to a mortgagee by means of a foreclosure on a mortgage is not an acquisition under this section if the mortgagee does not hold the permanent or long-term interest in real property for more than five years.

Textual irregularities:

Related Commonwealth Code Sections: See 2 CMC §§ 4466 and 4467 (protection of non-NMI federal mortgage insurers and mortgagees after foreclosure or succession to title) and 2 CMC § 4636 (purchaser at foreclosure or public sale must be entitled to own property in NMI).

Comment: Amendment 25 introduced irregularities in capitalization ("Section", "Federal Agency" and "Governmental").

Notes of Decisions

1. Generally
 2. Marital Property
 3. Mortgages
 4. Option Contracts
- Particular Cases

1. Generally

Under NMI Const. art. XII, only persons of Northern Marianas descent may acquire permanent and long-term interests in real property in the Commonwealth. The

only exceptions are (a) transfers to a spouse (who is not of Northern Marianas descent) by inheritance in certain circumstances, and (b) transfers to a mortgagee (such as a bank or lending institution) by foreclosure on a mortgage if the mortgagee does not hold an interest in the property for more than a specified period. NMI Const. art. XII, § 2.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991),
rev'd, 31 F.3d 756 (9th Cir. 1994).

2. Marital Property

Marital Property Act of 1990, providing for division of property in marital dissolutions, may not be applied in a manner that violates NMI Const. art. XII. 8 CMC § 1811 et seq.

Hofschneider v. Hofschneider, Appeal No. 94-010 (N.M.I. Sup. Ct. May 11, 1995) (Opinion at 2).

3. Mortgages

Exception for acquisition of land by certain mortgagees in NMI Const. art. XII, § 2 does not extend to private mortgagees.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 10).

4. Option Contracts

--Particular Cases

Where plaintiff and defendant entered into a contract whereby plaintiff paid defendant not to lease or otherwise alienate his property for a one year period and this option did not give plaintiff any right to enter or otherwise use the property, and plaintiff did not acquire any possessory interest in property, option period could not be added to length of proposed lease in determining whether long term interest in land had been conveyed in violation of constitutional restriction on alienation of land. NMI Const. art. XII.

Duty Free Shoppers, Ltd. v. Sablan, 3 CR 623 (Trial Ct. 1989).

Section 3: Permanent and Long-Term Interests in Real Property. The term permanent and long-term interests in real property used in Section 1 includes freehold interests and leasehold interests of more than fifty-five years including renewal rights, except an interest acquired above the first floor of a condominium building. Any interests acquired above the first floor of a condominium building is restricted to private lands. ~~Any interests acquired above the first floor of a condominium building is restricted to private lands.~~ Any land transaction in violation of this provision shall be void. This amendment does not apply to existing leasehold agreements.

gramm. error - 'is'

no plural

History: Adopted 1978; amended 1985 by Amendment 35. Amendment 35 changed the maximum permissible leasehold interest from 40 to 55 years, capitalized "Section", inserted ", except an interest acquired above the first floor of a condominium building" after "renewal rights" in the first sentence, and added all language after the first sentence.

Textual Irregularities and error

Comment: According to Amendment 35's title, it was intended "to allow the sale and long-term lease of building above the first floor." Amendment 35 introduced an irregularity in capitalization ("Section").

Notes of Decisions

I. Freehold Interests

--Particular Cases

- 2. Long-Term Interests
 - Particular Cases
- 3. Renewal Rights
 - Particular Cases

1. Freehold Interests

"Freehold interests" subject to constitutional restriction on land alienation are all types of ownership or title--fee simple, fee tail, and life estate. A "freehold" is an estate in land or other real property, of uncertain duration; that is, either of inheritance or which may possibly last for the life of the tenant at the least (as distinguished from a leasehold). An estate to be a freehold must possess these two qualities: (1) immobility, that is, the property must be either land or some interest issuing out of or annexed to land; and (2) indeterminate duration, for if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold. NMI Const. art. XII, § 3.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

An equitable interest of indeterminate duration is encompassed within a freehold interest, and is within the constitutional restriction on land alienation. NMI Const. art. XII, § 3.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

--Particular Cases

Since equitable interest in property acquired by payers of option consideration was of indeterminate (i.e., uncertain) duration, it was a freehold interest.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

2. Long-Term Interests

--Particular Cases

Lease covenant obligating lessor to purchase any improvements to land at end of lease term, secured by lien to non-NMI descent lessees on lessor's reversionary interest (subject to foreclosure 15 days after notice), conferred lessees with long-term interest in leased property, violating NMI Const. art. XII.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 10-11).

3. Renewal Rights

The transfer of a right that empowers a person who is not

of Northern Marianas descent to acquire an interest in land beyond a 55-year leasehold, as for example through an option to renew or to extend, would contravene the purpose of NMI Const. art. XII and, therefore, be invalid.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 8).

"Renewal rights" in NMI Const. art. XII, § 3 include any right, conditional or unconditional, that a person who is not of Northern Marianas descent could exercise to acquire a leasehold interest in land exceeding 55 years.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 8).

Renewal rights are expressly included in the calculus of "interest in real property" under NMI Const. art. XII. They cannot be used to increase the interest in land of a person who is not of Northern Mariana Islands descent beyond a 55-year leasehold.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 9).

NMI Const. art. XII was designed not only to prevent a person who is not of Northern Marianas descent from actual acquisition of a leasehold interest beyond 55 years, but also to prohibit a person who is not of Northern Marianas descent from holding any right or power that would allow it to later acquire a leasehold interest in land in excess of 55 years.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 10).

--Particular Cases

Provision in lease granting non-Northern Marianas descent lessee an option to extend lease term beyond 55 years up to 90 years if Commonwealth law was changed to permit longer maximum term imposed legally-enforceable limit upon lessor's power to sell or encumber remainder fee interest to any party other than lessee for 35 years beyond maximum 55-year term. Although provision was conditional on change in law, it was nonetheless constitutionally-impermissible "renewal right." NMI Const. art. XII, § 3.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 9-12).

Where alien corporation leased land for a term of 30 years with a 20 year option to renew, lease was void *ab initio* under NMI Constitutional provision restricting

leasehold interests of persons not of Northern Marianas descent to 40 years. NMI Const. art. XII.

Wabol v. Muna, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

Lease under which corporation not of Northern Marianas descent took interest in land for a 30 year term with an option to extend for an additional 20 years, at the option of the lessee, violated NMI Constitutional provision prohibiting the acquisition of long-term interests in real property. NMI Const. art. XII.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985), *rev'd in part*, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

In analyzing constitutional validity of lease clause providing that lessor was to grant lessee of non-NMI descent title to property if Commonwealth law changed to allow persons of non-NMI descent to own land, time when clause would be acted upon was irrelevant. Time when the decision was made to include clause--to alienate land if law was changed--was relevant. NMI Const. art. XII was designed not only to prevent a person of non-NMI descent from actual acquisition of a leasehold interest beyond 55 years, but also to prohibit a person of non-NMI descent from holding any right or power that would allow person to later acquire leasehold interest in land in excess of 55 years. Lease clause in question, embodying decision in contravention of existing law to grant title in future to person of non-NMI descent, was unconstitutional and void *ab initio*.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 5⁶).

Memorandum of agreement specifying that person of NMI descent, lessor of property, was to deed his reversionary interest in property to lessees, persons of non-NMI descent, if NMI Const. art. XII was later adjudged to be unconstitutional or otherwise invalid, and to redeliver blank deed accompanying memorandum of agreement to person of lessees' choosing without additional consideration if NMI Const. art. XII remained in force, violated NMI Const. art. XII. Agreement and deed were thus void *ab initio*.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 8⁹).

Section 4: Persons of Northern Marianas Descent. A person of Northern Marianas descent is a person who is a citizen or national of the United States and who is of at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof or an adopted child of a person of Northern Marianas descent if adopted while under the age of eighteen years. For purposes of determining Northern Marianas descent, a person shall be considered to be a full-blooded Northern Marianas Chamorro or Northern Marianas Carolinian if that person was born or domiciled in the Northern Mariana Islands 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.

History: Adopted 1978.

Cross References: See article XI, §1 (public lands belong collectively to people of Northern Marianas descent) and ~~article XII, § 5~~ (eligibility of corporation to be considered person of NMI descent).

Related Commonwealth Code Sections: See 2 CMC § 4333 (eligibility for village homestead program) and 2 CMC § 4354 (eligibility for homestead compensation program).

Notes of Decisions

1. Generally
2. Guamanians
--Particular Cases

245 (N.M.I. Super. Ct. Nov. 17, 1993)
(Decision and Order on Cross-Motions for Summary Judgment at 5).

1. Generally

Test to determine whether person is of Northern Marianas descent is not racially or ethnically based, but is based on identifying those persons who chose to make the Northern Marianas their home and who acquired Trust Territory citizenship as of 1950. NMI Const. art. XII, § 4.

Boddy v. Leon Guerrero, Civ. Action No. 93-245 (N.M.I. Super. Ct. Nov. 17, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 3-4).

Framers of NMI Const. art. XII, § 4 meant to distinguish between Chamorros living in the Northern Marianas and those from Guam. Chamorros living on Guam and Carolinians living on Truk presumably could not be considered as being of Northern Marianas descent.

Boddy v. Leon Guerrero, Civ. Action No. 93-245 (N.M.I. Super. Ct. Nov. 17, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 4).

Test enunciated in NMI Const. art. XII, § 4 was designed to confine land ownership to those people who worked for the political and economic betterment of the NMI and who considered NMI their home. Test was not designed to encompass a diaspora of persons whose families at one time lived in NMI as administrators from elsewhere, even if those persons are of Chamorro ethnicity.

Boddy v. Leon Guerrero, Civ. Action No. 93-

2. Guamanians

--Particular Cases

Member of family that came from Guam to Rota in 1891 as colonial administrators and returned to Guam in 1908, and who acquired U.S. citizenship as Guamanian pursuant to Organic Act of Guam, 48 U.S.C. § 1421 et seq., was not person of Northern Marianas descent as defined in NMI Const. art. XII, § 4.

Boddy v. Leon Guerrero, Civ. Action No. 93-245 (N.M.I. Super. Ct. Nov. 17, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 4).

Section 5: Corporation. A corporation shall be considered to be a person of Northern Marianas descent so long as it is incorporated in the Commonwealth, has its principal place of business in the Commonwealth, has directors one-hundred percent of whom are persons of Northern Marianas descent and has voting shares (i.e. common or preferred) one-hundred percent of which are actually owned by persons of Northern Marianas descent as defined in Section 4. Minors, as defined by applicable laws of the Commonwealth, may not be eligible to become directors of a corporation. No trusts or voting by proxy by persons not of Northern Marianas descent may be permitted. Beneficial title shall not be served from legal title.

History: Adopted 1978; amended 1985 by Amendment 36. This section originally provided:

Summary
Section 5: Corporations. A corporation shall be considered to be a person of Northern Marianas descent so long as it is incorporated in the Commonwealth, has its principal place of business in the Commonwealth, has directors at least fifty-one percent of whom are persons of Northern Marianas descent and has voting shares at least fifty-one percent of which are owned by persons of Northern Marianas descent as defined by section 4.

Amendment 36 also amended article XII, § 6 (next section; enforcement).

T-D
Related Commonwealth Code Sections: See 2 CMC § 4973 (disregard of corporate entity in actions concerning article XII).

Comment: Amendment 36 introduced an irregularity in capitalization ("Section").

Notes of Decisions

1. Generally
2. Constitutional Challenge
3. Foreign Equity Financing
4. Legislation
- Particular Cases

Wabol v. Muna, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

1. Generally

Records of 1985 Constitutional Convention indicate that drafters of amendment to NMI Const. art. XII, § 5 intended to close perceived loophole in existing law whereby outside investors were forming dummy corporations using people of Northern Marianas descent as fronts. Framers intended to prohibit private parties from entering into arrangements in which legal title would be severed from equitable title.

Dela-Cruz v. Hotel Nikko Saipan, Inc., Civil Action No. 91-259 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Defendants' Motion for Summary Judgment at 7^e-8).

2. Constitutional Challenge

NMI Constitutional provision which defines an alien corporation survives Fourteenth Amendment scrutiny. U.S. Const. amend. XIV; NMI Const. art. XII.

3. Foreign Equity Financing

Corporations considered to be persons of Northern Marianas descent may use foreign equity financing, through the issuance of non-voting shares, so long as the voting control of the corporation remains in hands of persons of Northern Marianas descent.

Taitano v. South Seas Corp., Civ. Action No. 92-1260 (N.M.I. Super. Ct. Mar. 7, 1994) (Decision and Order on Defendant Marianas Public Land Trust's Motion for Sanctions Against Plaintiff and His Counsel at 16, n.5).

4. Legislation

Statute concerning corporate conformance with NMI Const. art. XII, § 5 requirements precludes inquiry into identity of shareholders or directors beyond showing of record proof, but inquiry is permitted into allegations of fraud, "alter ego" treatment by corporate owners, or other circumstances which may warrant disregard of corporate

entity under common law as modified by statute. 2 CMC § 4973.

Dela Cruz v. Hotel Nikko Saipan, Inc., Civil Action No. 91-259 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Defendants' Motion for Summary Judgment at 6-7).

--Particular Cases

Constitutional challenge to statute under which record proof of corporate stock ownership and percentage of directors of NMI descent is conclusive as to which persons are directors or stockholders in NMI Const. art. XII, § 5 analysis would not be considered where challenge was based on assertion that court is prevented from hearing claim that records on file with Registrar of Corporations are false, and claim was not made in case before court. 2 CMC § 4973.

Dela Cruz v. Hotel Nikko Saipan, Inc., Civil Action No. 91-259 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Defendants' Motion for Summary Judgment at 4-5).

Where drafters of NMI Const. art. XII, § 5 intended title severance provision to prohibit private parties from entering into commercial transactions which separated legal and equitable title, in 2 CMC § 4973 legislature transformed title severance phrase into limitation on power of court to respond to such transactions. Title severance provision cannot be read to foreclose inquiry by court into whether a given corporate entity should be disregarded.

Dela Cruz v. Hotel Nikko Saipan, Inc., Civil Action No. 91-259 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Defendants' Motion for Summary Judgment at 8).

Section 6: Enforcement. Any transaction made in violation of Section 1 shall be void ab initio. 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. The Registrar of Corporation shall issue regulations to ensure compliance and the legislature may enact enforcement laws and procedures.

History: Adopted 1978; amended 1985 by Amendment 36. The second sentence of this section originally provided: "[w]henver 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 Constitution shall be forfeited to the government." Amendment 36 revised this sentence to its present form and added the third sentence. Amendment 36 also amended article XII, § 5 (preceding section; criteria for determining whether corporation is considered person of NMI descent).

Related Commonwealth Code Sections: See generally 2 CMC § 4941 et seq. (actions concerning article XII).

Comment: Amendment 36 introduced a grammatical error ("Corporation" in the last sentence should be pluralized) and irregularities in capitalization ("Section" in the first and second sentences, "Corporation" in the second sentence, and "Registrar of Corporation[s]" in the last sentence).

Notes of Decisions

- I. Generally
 - 1. Constitutional Challenge
 - 2. Transactions
 - Particular Cases
 - 3. Property Right
 - Particular Cases

- II. Actions
 - 1. Justiciability
 - Particular Cases
 - 2. Summary Judgment
 - Particular Cases
 - 3. Settlements
 - Particular Cases

III. Claims and Defenses

- 1. Prima Facie Case
- 2. Novel Theories
- 3. Agency Relationship
 - Particular Cases
- 4. Control
 - Particular Cases
- 5. Estoppel
- 6. Partnerships
 - Particular Cases
- 7. Renewal Rights
- 8. Trusts
 - Particular Cases
- 9. Resulting Trusts
 - Particular Cases

- IV. Remedies
 - 1. Reformation of Conveyance
 - Particular Cases
 - 2. Severability of Unconstitutional Provisions
 - Particular Cases
 - 3. Improvements

I. Generally

Intention of drafters of NMI Const. art. XII, § 6 could not be clearer; any transaction which violates NMI Const. art. XII, § 1 is completely without force and effect. The language of NMI Const. art. XII, § 6 admits of no equitable exceptions.

Wabol v. Villacrusis, 958 F.2d 1450 (9th Cir. 1990), cert. den. sub nom., *Philippine Goods, Inc. v. Wabol*, -- U.S. --, 113 S.Ct. 675, 121

L.Ed.2d 598 (1992).

Intention of drafters of NMI Const. art. XII, § 6 could not be clearer; any transaction which violates NMI Const. art. XII, § 1 is completely without force and effect. The language of NMI Const. art. XII, § 6 admits of no equitable exceptions.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 13).

Persons who are not of Northern Marianas descent may not legally acquire "permanent and long-term interests in real property within the Commonwealth" by "sale, lease, gift, inheritance or other means." Any transaction violating the constitutional restriction is void *ab initio*--void from the beginning, as if it never occurred. NMI Const. art. XII, §§ 1, 2, 6.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), rev'd, 31 F.3d 756 (9th Cir. 1994).

In assessing possible violations of NMI Const. art. XII, courts should scrutinize carefully any transaction entered into by a non-NMI descent person to determine whether the transaction would result in acquisition of a long-term interest by a person of non-NMI descent, or in having the land pass out of the hands of the people of the NMI.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 5).

1. Constitutional Challenge

Exemption from U.S. Constitution specified in Covenant § 805, which contains broad grant of authority to Commonwealth government to regulate alienation of permanent and long-term interests in real property so as to restrict their acquisition to persons of NMI descent, is limited to regulations adopted pursuant to this grant of authority. However, section 805 leaves to the Commonwealth government the decision over what types of long-term interests to restrict and therefore over which restrictions are insulated from constitutional attack. Enforcement provision of NMI Const. art. XII, which declares any transaction violating its terms void *ab initio*, is within section 805's grant of authority. NMI Const. art. XII, § 6.

Yokeno v. Mafnas, 973 F.2d 803 (9th Cir. 1992).

2. Transactions

In NMI Const. art. XII, § 6, providing that any "transaction" made in violation of NMI Const. art. XII, § 1 (restricting acquisition of permanent and long-term interests in land in Commonwealth to persons of NMI descent) is void *ab initio*, term "transaction" means the acquisition of an illegal interest by a person of non-NMI descent. That acquisition is the transaction which is void under NMI Const. art. XII. Term cannot be construed to abrogate acquisition of interest by a co-grantee (in instrument of conveyance) who is a person of NMI descent.

Manglona v. Kaipat, 3 N.M.I. 322 (1992).

The term "transaction" has a flexible meaning defined in light of the purposes behind NMI Const. art. XII. NMI Const. art. XII, § 6.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 5).

—Particular Cases

Intention of parties expressed in three documents--ground lease, blank warranty deed and memorandum of agreement--executed same day, between same parties, involving the same consideration and concerning transfer of property interests in same property, was that ground lease be considered separate from memorandum of agreement and blank warranty deed. For purposes of NMI Const. art. XII analysis, ground lease was one "transaction" and memorandum of agreement and warranty deed another "transaction."

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 6-8).

3. Property Right

A plaintiff does not have a vested property right in an NMI Const. art. XII cause of action based on operation of NMI Const. art. XII, § 6, providing that violative transaction is void *ab initio*. Only a court can declare a transaction to be violative of NMI Const. art. XII, and until that is done, no voiding of transaction takes place. Alleged rights of original landowner can not vest until there has been final, unreviewable judgment.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's

Motion for Summary Judgment at 10).

—Particular Cases

Retroactive application of statute under which record proof of corporate stock ownership and percentage of directors of NMI descent is conclusive as to which persons are directors or stockholders in NMI Const. art. XII, § 5 analysis did not violate vested property rights in action challenging constitutional validity of property transaction. Property rights do not vest, in constitutional sense, until final, unreviewable judgment is obtained. Since whatever property rights plaintiffs had were inchoate, they were not subject to constitutional protection from retroactive enactments. 2 CMC § 4973.

Dela Cruz v. Hotel Nikko Saipan, Inc., Civil Action No. 91-259 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Defendants' Motion for Summary Judgment at 4-5).

II. Actions

When the issue has been properly raised, violations of NMI Const. art. XII, restricting acquisition of permanent and long-term interests in real property within the Commonwealth to persons of Northern Marianas descent, may be addressed in proceedings involving only private parties.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

1. Justiciability

—Particular Cases

Because alien corporation was an alien corporation from the outset of land transaction, land lease made by it for term over 40 years was void *ab initio*, and original owners had standing to sue by virtue of their interest in protecting their land.

Wabol v. Muna, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

Where lease provided plaintiff with a lien on defendant's reversionary interest to secure defendant's performance of his obligation to purchase any permanent improvements constructed by plaintiff during term of lease, and defendant maintained that it was highly unlikely that he would be able to purchase multimillion-dollar improvements contemplated by plaintiff and, therefore, it was probable that he would lose property by default, giving plaintiff an interest in the land exceeding the

permissible limit, court would not render advisory opinion based on speculative events that could occur in next 55 years of lease period. NMI Const. art. XII.

Duty Free Shoppers, Ltd. v. Sablan, 3 CR 623 (Trial Ct. 1989).

For court to consider defendant's claim of illegality based on NMI Const. art. XII, there must be a justiciable controversy regarding plaintiff's lien on defendant's reversionary interest and, without a justiciable controversy, court did not have jurisdiction to entertain summary judgment motion. NMI Const. Art XII.

Duty Free Shoppers, Ltd. v. Sablan, 3 CR 623 (Trial Ct. 1989).

Persons alleging that they were owners of property in question and were entitled to rental from the property had standing to challenge contract as a violation of NMI Constitutional restriction on alienation of land.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985), *rev'd in part*, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

2. Summary Judgment

--Particular Cases

Undisputed facts that person of NMI descent purchased property in the NMI with funds provided entirely by persons who were not of NMI descent in furtherance of a partnership agreement were sufficient for purposes of a summary judgment proceeding involving claimed violation of NMI Const. art. XII.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

Where defendant presented no facts on motion for summary judgment raising genuine issue of material fact as to whether agent/principal relationship continued between person of NMI descent who acquired fee title to property on behalf of persons of non-NMI descent and then leased property to them, grant of summary judgment was proper on issue of whether arrangement violated land alienation restriction. Com.R.Civ.P. 56(c); NMI Const. art. XII.

Aldan-Pierce v. Mafnas, 3 CR 326 (Dist. Ct. App. Div. 1988).

In action alleging violation of NMI Const. art. XII, because material facts were undisputed and only question presented was question of law, case was ripe for summary judgment. It was undisputed that person of non-NMI descent wholly financed purchase of land by

person of NMI descent who became financier's lessor under agreement containing provision that in the event of a change in law removing land alienation restriction, person of NMI descent was to grant title to land to financier. Question of whether change of law provision constituted long term interest in contravention of NMI Const. art. XII was question of law.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 3).

Summary judgment was inappropriate on severability of lease provision violating NMI Const. art. XII and constitutionality of 2 CMC § 4982, providing for severability of contractual provisions violating NMI Const. art. XII, where Commonwealth Supreme Court decision setting forth new tests for severability and implicating factual issues had been issued after parties had filed and argued summary judgment motions; factual issues had not been briefed and could have been source of contention.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 6-9).

In action challenging constitutionality of conveyance of property to person of NMI descent based on fact that consideration was furnished by man of NMI descent and wife of non-NMI descent, defendants' claim that transaction did not violate NMI Const. art. XII as matter of law was not ripe for summary judgment. Facts were not sufficiently developed to allow careful scrutiny of transaction required in alleged NMI Const. art. XII violations.

Boddy v. Leon Guerrero, Civ. Action No. 93-245 (N.M.I. Super. Ct. Nov. 17, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 6-7).

3. Settlements

--Particular Cases

Where parties had stipulated to settlement of action, court would sua sponte void settlement as violative of land alienation restriction of NMI Constitution. NMI Const. art. XII.

Ferreira v. Borja, 3 CR 472 (Trial Ct. 1988), *aff'd*, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

III. Claims and Defenses

1. Prima Facie Case

There can never be a situation where there is an automatic illegal purpose (in a conveyance) under NMI Const. art. XII. There must first be an acquisition of an interest in land. Then a court may analyze the acquisition to determine if it violates NMI Const. art. XII. If it makes such a determination, then the acquisition (i.e., transaction) becomes void *ab initio*.

Manglona v. Kaipat, 3 N.M.I. 322 (1992).

For a person to succeed in a cause of action alleging a violation of NMI Const. art. XII, certain material facts have to be clearly present and undisputed: (1) acquisition of land in the NMI; (2) the acquisition is a permanent and long-term interest; and (3) the acquisition was made by a person who is not of NMI descent.

Ferreira v. Borja, 2 N.M.I. 514 (1992),
vacated, 1 F.3d 960 (9th Cir. 1993).

A prima facie case establishing an NMI Const. art. XII violation must demonstrate that an acquisition of NMI land by a person who is not of Northern Marianas descent was made and that the acquisition is a permanent and long-term interest.

Mafnas v. Laureta, Civ. Action No. 88-696
(N.M.I. Super. Ct. May 2, 1995)
(Memorandum Decision and Order on Plaintiff's
Motion for Summary Judgment at 3).

2. Novel Theories

Counsel should be given latitude in advancing new NMI Const. art. XII arguments; the history of NMI Const. art. XII litigation demonstrates that this text is subject to a variety of arguably valid interpretations. However, where an argument contradicts or ignores either an express provision of NMI Const. art. XII or a directly-applicable part of the reported legislative history, court must consider that argument foreclosed by binding law.

Taitano v. South Seas Corp., Civ. Action No.
92-1260 (N.M.I. Super. Ct. Mar. 7, 1994)
(Decision and Order on Defendant Marianas
Public Land Trust's Motion for Sanctions
Against Plaintiff and His Counsel at 12-13).

3. Agency Relationship

—Particular Cases

In challenge to sale of property to person of Northern Marianas descent on basis that third parties not of Northern Marianas descent furnished purchase money, because purported transaction to be accomplished (acquisition of constitutionally-prohibited interest by third parties) had illegal purpose under NMI Const. art. XII, no resulting trust could arise in favor of third parties. Since agency theory was also inapplicable, court would

not consider constitutionality of agreements person of Northern Marianas descent may have had with third parties. Title to property would be quieted in person of Northern Marianas descent.

Ferreira v. Borja, Appeal No. 90-047 (N.M.I.
Sup. Ct. Jan. 3, 1995) (Opinion on Remand at
2-3).

In action challenging sale of property to person of Northern Marianas descent on basis that third party not of Northern Marianas descent furnished purchase money, where claimed violation of NMI Const. art. XII based on agency-trust theory was essentially agency theory that had been rejected by Commonwealth Supreme Court, Superior Court would grant defendant's cross-motion for summary judgment that no agency-trust arose from transactions.

Mafnas v. Laureta, Civ. Action No. 88-696
(N.M.I. Super. Ct. May 2, 1995)
(Memorandum Decision and Order on Plaintiff's
Motion for Summary Judgment at 4).

In action challenging sale of property to corporations based on claimed violation of NMI Const. art. XII, where plaintiffs claimed that corporations purchasing property acted for foreign corporation under agency-trust and agency-trust theory had been rejected in NMI Const. art. XII analysis by Commonwealth Supreme Court, Superior Court would grant defendant's motion for summary judgment that no agency-trust arose from transaction.

Dela Cruz v. Hotel Nikko Saipan, Inc., Civ.
Action No. 91-259 (N.M.I. Super. Ct. May 2,
1995) (Memorandum Decision and Order on
Defendants' Motion for Summary Judgment at
8-9).

Where persons not of Northern Marianas descent directed plaintiff, a person of Northern Marianas descent, to exercise option agreement on land owned by defendant, paying purchase price and, in turn, executing long-term lease to those persons, transaction did not violate NMI Constitutional provision restricting permanent and long term interests in land to persons of Northern Marianas descent. NMI Const. art. XII, § 1.

Aldan-Pierce v. Mafnas, 2 CR 855 (Trial Ct.
1986), *aff'd*, 3 CR 326 (Dist. Ct. App. Div.
1988).

4. Control

Any agreement whereby person of non-NMI descent could extend his or her rights beyond 55 years, or pursuant to which person of NMI descent would be stripped of his or her interest in land, upon occurrence of conditions subsequent outside control of person of NMI descent, or without independent assent by person of NMI

descent, renders transaction violative of NMI Const. art. XII.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 8).

--Particular Cases

Lease provisions prohibiting lessor from mortgaging his reversionary interest in property to anyone other than non-NMI descent lessees without lessees' consent and obligating lessor to execute mortgage or loan agreement subordinating his fee interest to institutional lender so that lessees could obtain construction financing deprived lessor of control over encumbrance of fee interest and granted lessees almost total discretion to mortgage leasehold and fee. Lessees were empowered to obtain as many loans under whatever terms they could, and to default on loans, causing foreclosure resulting in loss of lessor's fee. Because lessor could be stripped of his interest in property upon occurrence of conditions subsequent which were outside his control, lease provisions violated NMI Const. art. XII.

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 11-13).

5. Estoppel

Public policy dictates that estoppel is inapplicable in action challenging land transaction as a violation of Constitutional provision restricting ownership of land to protect native born Northern Marianas islanders from foreign exploitation. NMI Const. art. XII.

Wabol v. Muna, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

6. n. marital property
Partnerships — See Notes of Decisions to article XII, §2

Partnership of persons who are not of NMI descent and person who is of NMI descent is not recognized in NMI Const. art. XII as person capable of owning permanent and long-term interest in real property in the Commonwealth.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

--Particular Cases

Acquisition of land by person of Northern Marianas descent for herself where she had a partnership agreement

with her husband and two other persons not of Northern Marianas descent, using their combined money to acquire land in the Northern Mariana Islands, violated land alienation restriction of the Northern Marianas Constitution. NMI Const. art. XII.

Ferreira v. Borja, 3 CR 472 (Trial Ct. 1988), *aff'd*, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

7. Renewal Rights

See Notes of Decisions to article XII, § 3.

8. Trusts

Acquisition of freehold interest in Commonwealth real property by persons who are not of Northern Marianas descent through a trustee who is of such descent is one of the "other means" of acquisition prohibited by NMI Const. art. XII, § 2. The constitutional restriction would be undermined if persons who are not of Northern Marianas descent could acquire a prohibited interest via a trust relationship.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

--Particular Cases

Although trial court erroneously applied agency principles instead of trust law in summary judgment ruling that acquisition of property in the NMI violated NMI Const. art. XII, court's ruling that acquisition violated NMI Const. art. XII was correct.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

9. Resulting Trusts

Since Commonwealth could not constitutionally deprive purchasers of property interest through the expedient of untenable judicial interpretation of local law denying that property interest ever existed, NMI Supreme Court decision recognizing existence of resulting trust and using trust as basis for avoiding sale and giving land back to sellers would be vacated and remanded to NMI Supreme Court for reconsideration.

Ferreira v. Borja, 1 F.3d 960 (9th Cir. 1993).

NMI Supreme Court decision applying resulting trust and using trust as basis for avoiding sale of land and giving land back to sellers was untenable. A resulting trust is a trust implied in law from the intentions of the parties to a given transaction; purpose of doctrine is to protect persons who are rightful owners of land even though they do not have legal title. Courts have refused to find a resulting trust in favor of a person who purchased land

under another's name if that person did so to accomplish an illegal purpose. Court cannot use equitable powers to create resulting trust in favor of someone and then use existence of resulting trust as basis for finding that that person violated the law NMI Const. art. XII.

Ferreira v. Borja, 1 F.3d 960 (9th Cir. 1993).

If a resulting trust in real property in the Commonwealth has arisen in favor of a person who is not of Northern Marianas descent, it is subject to being declared invalid in a judicial proceeding if the equitable interest held for them in trust violates NMI Const. art. XII.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

If a person of NMI descent purchases land in the NMI with money entirely provided by a person of non-NMI descent, but it is clear that the intent of the transaction was that the person of non-NMI descent would only obtain a 55-year lease, or less, and the fee interest would be in the person of NMI descent, then constitutional prohibition would not be violated. NMI Const. art. XII.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

Resulting trust arising in favor of person who provides money to purchase land in NMI cannot be rebutted by disclaimer on part of payor, after unconstitutional act has been completed, of any intention to take more than a leasehold of 55 years. A person cannot violate the constitution and later attempt to correct the violation by saying that all that was intended was acquisition of a constitutionally permissible interest. NMI Const. art. XII.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

Although a resulting trust arising in favor of purchaser of land in NMI may be rebutted by evidence of purchase to accomplish an illegal purpose, a violation of NMI Const. art. XII does not occur unless and until a court declares a transaction to be violative of article XII. There can be no automatic illegal purpose under article XII; a court must first declare a transaction to be unconstitutional.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

A resulting trust in real property in the Commonwealth arising in favor of a person who is not of Northern Marianas descent is valid, unless the equitable interest held for them in trust is declared, in a judicial proceeding by a court of competent jurisdiction, to be violative of NMI Const. art. XII. If the equitable interest is ruled violative of article XII, the underlying transaction through which the person who is not of Northern Marianas descent acquired the interest becomes void *ab initio*.

NMI Const. art. XII, § 6.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

A resulting trust in real property in favor of a person who is not of Northern Marianas descent is valid, unless the equitable interest held for them in trust is declared, in a judicial proceeding, to be violative of NMI Const. art. XII. If the equitable interest is ruled violative of art. XII, the underlying transaction through which the person who is not of Northern Marianas descent acquired the interest becomes void *ab initio*. NMI Const. art. XII, § 6.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

Although, under *Restatement (Second) of Trusts* § 441 (1959), it may be possible to limit resulting trust to leasehold interest despite fact that a transferee acquiring legal title did not pay any of the purchase price, principle would nullify NMI Const. art. XII and therefore does not apply in the NMI.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

If a resulting trust in real property in the Commonwealth has arisen in favor of a person who is not of Northern Marianas descent, it is subject to being declared invalid in a judicial proceeding if the equitable interest held for them in trust violates NMI Const. art. XII.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

A resulting trust in real property in the Commonwealth arising in favor of a person who is not of Northern Marianas descent may be rebutted by clear evidence that the money used to purchase the property was a valid gift, loan, or payment to discharge a debt or other obligation. *Restatement (Second) of Trusts* §§ 445, 446, 447 (1959).

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

—Particular Cases

In challenge to sale of property to person of Northern Marianas descent on basis that third parties not of Northern Marianas descent furnished purchase money, because purported transaction to be accomplished (acquisition of constitutionally-prohibited interest by third parties) had illegal purpose under NMI Const. art. XII, no resulting trust could arise in favor of third parties. Since agency theory was also inapplicable, court would not consider constitutionality of agreements person of Northern Marianas descent may have had with third parties. Title to property would be quieted in person of Northern Marianas descent.

Ferreira v. Borja, Appeal No. 90-047 (N.M.I.

Sup. Ct. Jan. 3, 1993) (Opinion on Remand at 2~~2~~3).

Under partnership agreement in which partner of NMI descent agreed to purchase land in NMI and hold title for partnership, which included partners of non-NMI descent who provided purchase money, partner of non-NMI descent was never meant to be fee simple owner of land. Agreement dispelled any exception to resulting trust arising in favor of partners who provided purchase money. Under agreement, partner of NMI descent was to hold fee simple title to land for the benefit of the partnership, subject to certain restrictions--including duty to convey to the partnership if land alienation restriction changed and other partners could legally hold title, or to a person of NMI descent designated by the partnership if partner of NMI descent withdrew from partnership.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

Under partnership agreement in which partner of NMI descent agreed to purchase land in NMI and hold title for partnership, which included partners of non-NMI descent who provided purchase money, resulting trust arising in favor of partners who provided purchase money was not rebutted by terms of agreement. Under agreement, there was no clear evidence that partner of NMI descent was to obtain title as a gift or loan, or to discharge a debt or other obligation, to rebut resulting trust.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

Under partnership agreement in which partner of NMI descent agreed to purchase land in NMI and hold title for partnership, which included partners of non-NMI descent who provided purchase money, a trust was clearly contemplated. Partner of NMI descent was to lease land to partnership with proviso that if land alienation restriction changed and other partners could legally hold title, the partnership would obtain title for no additional consideration. If there was no change in the law, partner of NMI descent was to purchase improvements on land at the end of the lease term. Finally, partner of NMI descent was required to transfer her interest in the land if she left the partnership. Accordingly, partners of non-NMI descent acquired equitable interest of indeterminate duration in land under resulting trust.

Ferreira v. Borja, 2 N.M.I. 514 (1992), *vacated*, 1 F.3d 960 (9th Cir. 1993).

Resulting trust arising in favor of persons of non-NMI descent who provided money to purchase land was not rebutted by any evidence that person of NMI descent who acquired title was a relative or natural object of their bounty.

Ferreira v. Borja, 2 N.M.I. 514 (1992),

vacated, 1 F.3d 960 (9th Cir. 1993).

Because NMI Const. art. XII, § 6 provides that transactions underlying impermissible acquisitions of real property are void *ab initio*, decision that payers acquired constitutionally impermissible interest in real property under resulting trust sprang back to date when option (the underlying transaction) to purchase property was executed. Payers were retroactively divested of their interest, and thus could not subsequently make a gift of that interest.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

Where record indicated that payers intended to retain equitable interest of indeterminate duration, paid entire option consideration and clearly intended to pay entire purchase price, resulting trust was not rebutted in part. Payers acquired equitable interest of indeterminate duration in real property in the Commonwealth.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

Because payers of option consideration who acquired freehold interest in real property under resulting trust were not of Northern Marianas descent, their acquisition violated NMI Const. Art. XII. The underlying transaction (the option contract) was thus void *ab initio*.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).

Asserted violation of NMI Const. art. XII in conveyance of property to person of NMI descent based upon claim that resulting trust arose in favor of person of non-NMI descent who paid consideration would be rejected based upon appellate court ruling and legislation providing that resulting trust does not arise under such circumstances. 2 CMC § 4962 [PL 8-32, § 4 (§ 4922)].

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 14).

Asserted violation of NMI Const. art. XII in conveyance of property to person of NMI descent based upon claim that resulting trust arose in favor of person of non-NMI descent who paid consideration would be rejected based upon appellate court ruling and legislation providing that resulting trust does not arise under such circumstances. 2 CMC § 4962 [PL 8-32, § 4 (§ 4922)].

Boddy v. Leon Guerrero, Civ. Action No. 93-245 (N.M.I. Super. Ct. Nov. 17, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 5~~5~~6).

Where prospective payors disavowed a fee simple interest

in land to be purchased with their funds, and manifested clear intention to take only a legal leasehold interest in land, execution of a lease agreement was the culmination of agency/trust activities between the title holder and prospective payors, and a clear rebuttal of a resulting trust.

Aldan-Pierce v. Mafnas, 2 CR 855 (Trial Ct. 1986), *aff'd*, 3 CR 326 (Dist. Ct. App. Div. 1988).

IV. Remedies

1. Reformation of Conveyance

NMI Const. art. XII, § 6, providing that any transaction made in violation of NMI Const. art. XII, § 1's restriction on land alienation is void *ab initio*, precludes reformation of lease agreement that violates section. Language admits of no equitable exceptions.

Wabol v. Villacrusis, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

The better and more enlightened rule and one which more effectively addresses the equities involved where lease is held to violate the Constitutional restriction on the alienation of land is that lease will be declared void only as to the excess term which violates the constitutional provisions. NMI Const. art. XII.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985), *rev'd in part*, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

--Particular Cases

NMI Const. art. XII, restricting acquisition of long-term interests in NMI land to persons of NMI descent, prohibited grantee of non-NMI descent from taking title to one-half interest in property conveyed under deed of gift. Accordingly, grantee's one-half interest in property reverted to grantor's estate and passed via grantor's will (if any) to her devisees, or by the laws of intestate succession to her heirs. Devisees or heirs taking the one-half interest would share tenancy in common with other grantee.

Manglona v. Kaipat, 3 N.M.I. 322 (1992).

In action in which deed of gift conveying land to one grantee of NMI descent and one grantee of non-NMI descent was challenged as violative of NMI Const. art. XII, although conveyance to grantee of non-NMI descent was void *ab initio*, entire deed was not void, and grantee

of NMI descent took interest in property.

Manglona v. Kaipat, 3 N.M.I. 322 (1992).

Where alien corporation leased land for a term of 30 years with a 20 year option to renew, lease was void *ab initio* under NMI Constitutional provision restricting leasehold interests of persons not of Northern Marianas descent to forty years. NMI Const. art. XII.

Wabol v. Muna, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

Trial court did not err in concluding that contract for the sale of land was void in part because it violated restriction on alienation of land to persons not of Northern Marianas descent, but unenforceability of one provision did not void the whole agreement. NMI Const. art. XII.

Hemlani v. Villagomez, 1 CR 203 (Dist. Ct. App. Div. 1981).

Where defendants negotiated lease for 30 year term with option to extend for 20 years, portion of lease purporting to transfer interest greater than 40 years was void *ab initio* under NMI Constitution. NMI Const. art. XII.

Wabol v. Muna, 2 CR 231 (Trial Ct. 1985), *rev'd in part*, 2 CR 963 (Dist. Ct. App. Div. 1987), *aff'd sub nom.*, *Wabol v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990), *cert. den. sub nom.*, *Philippine Goods, Inc. v. Wabol*, --- U.S. ---, 113 S.Ct. 675, 121 L.Ed.2d 598 (1992).

2. Severability of Unconstitutional Provisions

NMI Const. art. XII does not preclude severance of unconstitutional provision in lease where parties have agreed to do so under severability clause in order to save underlying lease.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 17).

Where Commonwealth Supreme Court held, in decision grounded in NMI Const. art. XII, that if lease provision violating Constitution is an integral part of lease, court must declare entire agreement void *ab initio* notwithstanding severability clause in lease, Supreme Court's test prevailed over 2 CMC § 4982(b), calling for automatic enforcement of severability clauses in agreements found to transgress NMI Const. art. XII. Insofar as it mandated severability of integral provision within a transaction, statute was unconstitutional.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's

Motion for Summary Judgment at 9).

-Particular Cases

Unconstitutional provision in lease granting non-Northern Marianas descent lessee an option to extend lease term beyond 55 years up to 90 years if Commonwealth law was changed to permit longer maximum term could be severed without offending void *ab initio* mandate of NMI Const. art. XII, § 6 because: (1) parties agreed to severance of any illegal provision by including severability clause; (2) language of severability clause indicated that option provision was not integral to lease because parties anticipated that provision might violate NMI Const. art. XII. With severance of unconstitutional option provision, lessee was left with constitutionally-valid 55-year lease.

Diamond Hotel Co., Ltd. v. Matsunaga, Appeal No. 93-023 (N.M.I. Sup. Ct. Jan. 19, 1995) (Opinion at 17-20).

Retroactive application of statute calling for automatic enforcement of severability clauses in agreements found to transgress NMI Const. art. XII did not infringe due process rights of plaintiff in action challenging validity of property sale and subsequent lease. Claim that original landowner remained vested with title by operation of NMI Const. art. XII, § 6, providing that violative transaction is void *ab initio*, failed because only a court can declare a transaction to be violative of NMI Const. art. XII, and until that is done, no voiding of transaction takes place. Alleged rights of original landowner could not vest until there had been final, unreviewable judgment, which had not occurred. 2 CMC § 4982(c); U.S. Const. amend. XIV; NMI Const. art. I, § 5.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 10).

In action challenging validity of land transaction under NMI Const. art. XII, restricting ownership of long-term interests in real property to persons of NMI descent, claim by plaintiff that retroactive application of statute calling for automatic enforcement of severability clauses in agreements transgressing NMI Const. art. XII violated his equal protection rights because it was designed to discriminate against NMI Const. art. XII plaintiffs failed because plaintiff was neither within suspect classification nor infringed of fundamental right. 2 CMC § 4982(c); NMI Const. art. I, § 6; U.S. Const. amend. XIV.

Mafnas v. Laureta, Civ. Action No. 88-696 (N.M.I. Super. Ct. May 2, 1995) (Memorandum Decision and Order on Plaintiff's Motion for Summary Judgment at 10-11).

Pursuant to statute requiring strict enforcement of severability clauses in agreements found to violate NMI Const. art. XII, court would sever unconstitutional provisions of lease and uphold remaining unobjectionable provisions. Unconstitutional provisions had no effect upon property rights of parties as they passed to current fee owner of property and lessee. 2 CMC § 4982 [PL 8-32, § 8 (§ 4952)].

Mafnas v. Yokeno, Civ. Action No. 90-550 (N.M.I. Super. Ct. Dec. 7, 1993) (Decision and Order on Cross-Motions for Summary Judgment at 13).

3. Improvements

If a property transaction is rendered void as violative of NMI Const. art. XII, an equitable remedy may be available to a possessor of property who constructed improvements under the good-faith (but erroneous) belief that they held clear title or a valid leasehold.

Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991), *rev'd*, 31 F.3d 756 (9th Cir. 1994).