

**Francisca T. PALACIOS
vs.
COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS, et al.**

**Appellate No. 81-9017
Civil Action No. 79-204-A
District Court NMI
Appellate Division**

Decided June 27, 1983

**Decision on remand to the
Commonwealth Trial Court,
August 2, 1985**

**Affirmed, Appellate Division of
District Court, November 14,
1986**

**1. Statute of Limitations -
Trusts**

Between a trustee and a beneficiary a statute of limitations has no application, and no length of time is a bar to suit against the trustee absent laches by the beneficiary or the trustee's repudiation of the trusts.

2. Laches - Trusts

A beneficiary is not barred merely by the lapse of time from enforcing the trust, but if the trustee repudiates the trust to the knowledge of the beneficiary, the beneficiary may be barred by laches from enforcing the trust.

3. Trusts - Elements

The following elements are required to create an express trust: (1) trust property; (2) a trust beneficiary; (3) a trustee who holds the trust property subject to equitable duties to serve the trust

beneficiaries; and (4) a manifestation of intent to create a trust.

4. Trusts - Creation

In deciding whether a trust has been created, the crucial question is whether the settlor manifested an intention to impose upon himself or upon a transferee of the property equitable duties to deal with the property for the benefit of another person.

**5. Trusteeship - Trust Territory -
Duties**

The Trusteeship Agreement creates an express trust and the Trust Territory government is legally bound, to the same extent as the United States, to protect the area's inhabitants against the loss of their lands.

6. Trust Territory

The Trust Territory government stands in a fiduciary relationship as trustee to the peoples of the Trust Territory and is barred from asserting the statute of limitations as a defense to land taking claim.

7. Laches - Trusts

A trustee may be insulated by laches even though the limitations statute affords no protection.

8. Laches - Trusts

In determining whether a beneficiary is barred by laches from asserting a breach of trust claim against the trustee, a court will consider: (1) The length of time which has elapsed between the commission of the breach of trust and the bringing of suit; (2) whether the beneficiary knew or had reason to know of the breach of trust; (3) whether the beneficiary was under an incapacity; (4) whether the beneficiary's interest was presently enjoyable or enjoyable only in the future; (5) whether the beneficiary had complained of the breach of trust; (6) the reasons for the

delay of the beneficiary in suing; (7) change of position by the trustee, including loss of rights against third persons; (8) the death of witnesses or parties; (9) hardship to the beneficiary if relief is not given; and (10) hardship to the trustee if relief is given.

9. Statute of Limitations -

Trusts

The Commonwealth is not a trustee under the United States Trusteeship Agreement and thus may invoke the statute of limitations as a defense to a land taking claim.

10. Trusts - Liabilities of Transferee of Trust Property

A transferee of trust property is liable for the trustee's breach regarding that property only if the transferee takes the property with notice of the breach.

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By *[Signature]*

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IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS
APPELLATE DIVISION

9	FRANCISCA T. PALACIOS,)	CIVIL APPEAL NO. 81-9017
10	Plaintiff-Appellant,)	(CTC CIV. NO. 79-204-A)
11	vs.)	
12	COMMONWEALTH OF THE NORTHERN)	<u>OPINION</u>
13	MARIANA ISLANDS, MARIANAS)	
14	PUBLIC LAND CORPORATION,)	
15	SANTIAGO C. TUDELA, and)	
16	THE TRUST TERRITORY OF THE)	
	PACIFIC ISLANDS,)	
	Defendants-Appellees.)	

BEFORE: LAURETA and GILLIAM, District Judges and SOLL, Designated Judge*

LAURETA, District Judge

I. STATEMENT OF THE CASE/FACTS

Plaintiff-Appellant Francisca T. Palacios appeals the lower court's grant of summary judgment to the Commonwealth of the Northern Mariana Islands (CNMI), the Marianas Public Land

*Honorable Herbert D. Soll, Commonwealth Trial Court Associate Judge sitting by designation pursuant to 48 U.S.C. § 1694b.

1 Corporation (MPLC) and the Trust Territory of the Pacific Islands
2 (TTPI).¹ Palacios seeks compensation under the Trusteeship Agree-
3 ment² and the Trust Territory Bill of Rights' due process clause³
4 for the 1944 taking by the United States of land owned by Palacios'
5 now-deceased father, Juan Tudela. The lower court granted summary
6 judgment on the ground that Palacios' claim accrued in 1951 and
7 became time-barred in 1971 under the twenty-year limitations
8 statute applicable to land actions (6 TTC § 301(1)(b)).

9 Juan Tudela owned Tanapag property across which United
10 States Military forces built a road in 1944. The road is Route
11 3, which is commonly called Beach Road. The United States trans-
12 ferred the property to the TTPI, which subsequently transferred
13 the property to the CNMI. Pursuant to CNMI Constitution Article
14 XI, the MPLC asserts title to the land. It is undisputed that
15 Tudela never received condemnation compensation for the taking.

16 On October 29, 1953, the TTPI issued Land Title Determi-
17 nation No. 729. Determination 729 named Juan Tudela as owner of
18 Lot 452 and the part of Lot 453 lying west of the highway built
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21 ¹Defendant Santiago Tudela, Palacios' brother, owns a half-
22 interest in the disputed land. He was brought in as an
23 indispensable party under Commonwealth Civil Procedure Rule 19
(TR 49). He did not move for summary judgment below and is not
involved in this appeal.

24 ²Trusteeship Agreement for the Former Japanese Mandated Islands,
July 18, 1947, 61 Stat. 3301, T.I.A.S. No. 1665.

25 ³1 Trust Territory Code (TTC) § 1 et. seq.
26

1 in 1944. Annex A attached to the Determination contained a
2 specific reservation of the TTPI's rights in the road. Neither
3 Tudela nor appellant contested the Determination as permitted by
4 Land Management Regulation No. 1.

5 Juan Tudela died in 1972. Appellant and defendant
6 Santiago Tudela are Juan's sole heirs. On June 30, 1975, the
7 Micronesian Claims Commission issued Decision No. 6630 concerning
8 the Tudela property. Title II of the Decision awarded Santiago,
9 as representative of his father's heirs, approximately \$8,500 in
10 compensation for past and present government use of the subject
11 property. When Santiago subsequently refused this portion of the
12 award, the Commission amended its Decision to reflect the refusal.
13 Appellant filed this action on November 2, 1979.

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15 II. ISSUES

16 A. Whether the TTPI is precluded from asserting a
17 statute of limitations defense because of its "trustee" relation-
18 ship with the corresponding obligations to plaintiff under the
19 Trusteeship Agreement.

20 B. Whether laches bars the action against the TTPI.⁴

21 C. Whether the statute of limitations barred the
22 action against the CNMI and MPLC.
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26 ⁴The TTPI affirmatively pleaded this defense below. No party
briefed or raised the issue on appeal. See pp. 17-18, infra.

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III. DISCUSSION

A. TTPI

[1] Courts recognize that between a trustee and a beneficiary "a statute of limitations has no application and no length of time is a bar" to suit against the trustee absent laches by the beneficiary or the trustee's repudiation of the trust. E.g., Connell v. U.S. Steel Corp., 516 F.2d 401, 408 (5th Cir. 1975) [citing Restatement, Second, Trust § 219 (1959)]; accord, Manchester Ban of Pomo Industries, Inc. v. U.S., 363 F.Supp, 1238, 2149 (N.D.Calif. 1973)(applying the principle above against the United States in a suit by Indians for mismanagement of tribal funds).⁵ See also Chisholm v. House, 183 F.2d 698, 706 (10th Cir. 1950) (applying the principle above on behalf of deceased Indian trust settlor's beneficiaries on the ground that the Indian decedent was "justifiably ignorant" of a breach of trust due to decedent's inability to read or speak English and consequent inability to meaningfully challenge the breach). Citing both California law and federal decisions, Judge Renfrew correctly noted in Manchester that this "universal rule" applies to fiduciary relationships in general. 363 F.Supp. at 1249. See also Anno., Fiduciary or Confidential Relationship As Affecting Estoppel to Plead Statute of Limitations, 45 A.L.R.3d 630. Thus, even if the TTPI is correct that the Trusteeship Agreement does not create an "express trust", the Court may apply the rule above to the TTPI, if a fiduciary relationship is found.

⁵In Manchester the court recognized that under Supreme Court precedent the United States as trustee is subject to the same standards as a private trustee. 363 F.Supp. at 1245.

1 Notwithstanding the TTPI's contrary indications, this
2 universal rule has been engrafted into the Trust Territory law.
3 In 1952 the High Commissioner⁶ promulgated a statute now codified
4 as 1 TTC § 103. After the Interior Secretary created the Congress
5 of Micronesia in 1965, the Congress of Micronesia re-enacted § 103
6 in 1966. In both instances, the adoption of § 103 occurred
7 contemporaneously with the promulgation of the limitations statute
8 upon which the TTPI relies.

9 [2] Section 103 specifically adopts the American Law
10 Institute's Restatements of the Law as Trust Territory law in the
11 absence of contrary superceding statute or indigenous customary
12 law. Under Restatement (Second) Trusts § 219(2)(1959), a "benefi-
13 ciary is not barred merely by the lapse of time from enforcing the
14 trust, but if the trustee repudiates the trust to the knowledge
15 of the beneficiary, the beneficiary may be barred by laches from
16 enforcing the trust." (emphasis added)

17 The TTPI's scholarly argument can be reduced to funda-
18 mentally one proposition. That proposition is that the Trustee-
19 ship Agreement does not create a common law express "trust" not-

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21 ⁶The High Commissioner is the United States official appointed
22 as chief executive of the Trust Territory. Prior to 1967 the
23 Interior Secretary appointed the High Commissioner. Since
24 1967 the President has appointed the High Commissioner with
25 the advice and consent of the Senate. See 48 U.S.C. § 1681(a).
26 See generally People of Saipan v. U.S. Department of the
Interior, 502 F.2d 90, 98 n.10 (9th Cir. 1974), cert.denied
420 U.S. 1003, 95 S.Ct. 1445, 43 L.Ed.2d 761 (1975). The
High Commissioner exercised all territory-wide legislative
power until the Interior Secretary created the Congress of
Micronesia in 1965.

1 withstanding the fact that United States officials drafted the
2 Trusteeship Agreement⁷ with the "sacred trust" language of U.N.
3 Charter Article 73 specifically in mind.⁸ This argument fails
4 for several reasons.

5 1.

6 First, at least two judicial decisions have accepted or
7 implied the characterization of the TT-Micronesian relationship
8 under the Trusteeship Agreement as a trust. In People of Saipan
9 v. U.S. Department of the Interior, 502 F.2d 90, 96 (9th Cir.
10 1974), cert.denied 420 U.S. 1003, 95 S.Ct. 1445, 43 L.Ed.2d 761
11 (1975), the 9th Circuit decided that the Trusteeship Agreement
12 confers judicially enforceable rights in favor of Micronesians.
13 In so holding the court specifically contrasted its view with
14 what it identified as the TTPI High Court's contrary position
15 that the Trusteeship Agreement "does not create a trust capable
16 of judicial enforcement." 502 F.2d at 99. Although the judicial
17 enforceability issue before the court did not require it to
18 definitively categorize the Trusteeship Agreement, the statement
19 above strongly indicates the court's implicit assumption that the
20 instrument creates a trust. A thorough law review analysis of
21 People of Saipan and pre-existing law also concludes that the 9th
22 Circuit unequivocally "repudiated" the High Court's characte-
23 rization of the Trusteeship Agreement as a "non-trust." D. Olsen,

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25 ⁷The Trusteeship Agreement was drafted by the State, War and
26 Navy Departments with the assistance of the Joint Chiefs of
Staff. S.Rep. No. 471, 80th Cogn. 1st Sess. 3 (1947).

⁸United Nations Security Council Official Record (113th Meeting)
at 411-412 (1947)(Statement of United States Ambassador Austin).

1 Piercing Micronesia's Colonial Veil, 15 Columbia J. of Transnat'l
2 L. 473, 493 (1976). While the TTPI ascribes considerable signi-
3 ficance to the court's description of the Trusteeship Agreement
4 as a "treaty", an "international agreement" or a "basic constitu-
5 tional document," the TTPI never convincingly explains away the
6 significance of the 9th Circuit's distinction of the High Court's
7 contrary view on the trust enforceability question. In Gale v.
8 Andrus, 643 F.2d 826, (D.C.Cir. 1980), the court unmistakably
9 characterized the relationship as a formal trust:

10 The ultimate fact of importance to
11 this Court is that the entire
12 authority of the United States is
13 derived from a trust. And, it is
14 clear... that it is a very unique
15 trusteeship agreement that differs
16 widely from any of the traditional
17 relationships of governmental enti-
18 ties... Like all trusts, there must
19 be a trustee to supervise the manage-
20 ment of the property within the
21 trust. Yet, the authority of the
22 trustee is never any greater than
23 that with which it was endowed by
24 the trust government... If one fails
25 to appreciate the true characteristics
26 of this unique relationship... it is
 easy to get lost... trying to pigeon-
 hole or label this entity called
 "Micronesia." However, we believe
 that if the trust aspects of the
 relationship are properly emphasized,
 the law... can be applied and affirmed.

22 Id. at 830 (emphasis on original). Gale reasserted what the court
23 had stated in Ralpho v. Bell, 569 F.2d 607 (D.C.Cir. 1977):

24 "Of course, the United States does not
25 hold the Trust Territory in fee simple,
26 as it were, but rather as a trustee."
 569 F.2d at 619.

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Second, a 1948 law promulgated by the TTPI itself explicitly affirmed that the Trusteeship Agreement creates a common law trust, especially with respect to the Article 6.2 obligation to protect the indigenous populace against the loss of their lands. Interim Regulation No. 4-48 by adding a Section 12 dealing with alien property.⁹ Section 12, Article I(c) specifically acknowledges the TTPI's obligation to protect the Trust Territory's inhabitants against the loss of their lands. Article I(d) continues:

"(d) The powers granted to the Administering Authority under the Trusteeship Agreement are very broad. The Administering Authority must, of necessity, assume many of the powers and obligations inherent to a common law trustee. These powers include, with reference to the assets of the trust, the power to incur expenses, power to lease, power of sale, and the power to compromise, arbitrate and abandon claims."
(emphasis added)

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3.

[3] Third, the Trusteeship Agreement satisfies the objective test for trust creation under the Restatement (Second) of Trusts which the TTPI itself made part of the Trust Territory law. Under Restatement § 2, the following elements are required to create an express trust: (1) trust property; (2) a trust beneficiary; (3) a trustee who holds the trust property subject

⁹The alien property provisions of 6-48 were re-enacted, periodically revised and now appear as 27 TTC § 1 et seq.

1 to equitable duties to serve the trust beneficiaries; and (4) a
2 manifestation of intent to create a trust.

3 [4] At least with respect to the Article 6.2 duty to
4 safeguard Trust Territory inhabitants against the loss of their
5 lands, the Trusteeship Agreement amply qualifies as a "trust"
6 under those criteria. The trust property or res obviously is
7 the land of the Trust Territory's various islands. As noted
8 above, Gale v. Andrus specifically recognized this. 643 F.2d at
9 830. The United States and its delegates, particularly the TTPI,
10 are the trustees. Id. The inhabitants of the TTPI are the
11 beneficiaries. Id. The Restatement instructs that the intent
12 to create a trust is manifested by "an intention to create
13 enforceable duties." Restatement § 23, comment a. The 9th
14 Circuit recently affirmed that "(i)n deciding whether a trust has
15 been created, the crucial question is whether the settlor mani-
16 fested an intention to impose upon himself or upon a transferee
17 of the property equitable duties to deal with the property
18 for the benefit of another person." Moose v. U.S., 674 F.2d
19 1277, 1281 n.7 (9th Cir. 1982)(emphasis added). As the TTPI
20 concedes, the 9th Circuit's People of Saipan decision stands
21 squarely for the proposition that the Trusteeship Agreement
22 objectively manifests the intention to create "direct", "affirma-
23 tive" and judicially enforceable rights in favor of Micronesians,
24 particularly with respect to the Article 6.2 "land loss protection"
25 obligation implicated in that decision. 502 F.2d at 96. Although
26 the TTPI attempts to distinguish itself from the United States

1 government for purposes of Trusteeship Agreement analysis, the
2 9th Circuit clearly decided in People of Saipan that the TTPI's
3 chief executive, the High Commissioner, is as bound as the United
4 States itself by the Agreement. Id. at 98.

5 [5.6] The relationship defined by the Trusteeship Agreement
6 is precisely the type of relationship which the Restatement
7 describes as fiduciary:

8 "A person in a fiduciary relation
9 to another is under a duty to act
10 for the benefit of another as to
11 matters within the scope of the
12 relation." Restatement, Trusts,
13 § 2, comment b.

12 The TTPI's supplemental brief candidly admits that as early as
13 1943 the United States characterized the future trusteeship
14 system as creating a "special responsibility" in the administering
15 nation "analogous to that of a trustee or fiduciary." (Defendant-
16 Appellee's Supplemental Brief, p. 25) Attempting to discredit
17 Palacios' reliance upon Indian law cases which articulate fiduciary
18 doctrines, the TTPI devotes considerable effort to an attempt to
19 distinguish the Indian and Micronesian relationships with the
20 United States; this attempt is unpersuasive.

21 The very purposes which engendered the judicially
22 created Indian fiduciary doctrine apply a fortiori to the Micro-
23 nesian-U.S. relationship. Citing case law and Chambers, Judicial
24 Enforcement of the Federal Trust Responsibility to Indians, 27
25 Stan.L.Rev. 1213 (1975), the TTPI observes that "(t)he relation-
26 ship of Indians to the United States was adduced by the Supreme

1 Court to support a liberal reading of Indian treaties." (Supple-
2 mental Brief at 21) As the Chambers article and the TTPI's cases
3 disclose, the policy consideration which influenced courts was
4 that Indians had come under federal "guardianship" due to unfairly
5 negotiated treaties after conquest, and therefore the United
6 States had a trust responsibility to these "dependent people."
7 Id. The congressional hearing and reports on the Trusteeship
8 Agreement which the TTPI provides us express a similar sense of
9 responsibility for a Micronesian populace assimilated by war
10 conquest into the U.S. control. Even stronger statements of
11 obligation by the U.S. appear in the Security Council debates on
12 approval of the Trusteeship Agreement. E.g., People of Enewetak v.
13 Laird, 353 F.Supp. 811, 817 (D.Haw. 1973)(quoting Security Council
14 debates). The only meaningful difference from the Indian situation
15 is that the Trusteeship Agreement, unlike Indian treaties, was an
16 instrument which the "dependent people" lacked even a nominal
17 role in negotiating. Unlike the classic Indian-U.S. "treaty"
18 relationship, the trusteeship relationship was thrust upon Micro-
19 nesians by the United States without their colorable participation
20 or consent.

21 The analogy between the Micronesian trusteeship relation-
22 ship and the Indian relationship has been judicially recognized.
23 In People of Saipan, the district court described the trusteeship
24 as a "trust relationship" to which the Indian analogy was "apt."
25 356 F.Supp. at 660. The court did not apply correlative fiduciary
26 doctrines to the merits because it concluded as a threshold

1 matter that the Trusteeship Agreement under which plaintiffs sued
2 was judicially unenforceable. Id.. The 9th Circuit disagreed
3 with that threshold ruling and, as indicated above, held that the
4 Trusteeship Agreement is judicially enforceable. Other courts
5 have applied the "Indian analogy" in holding that the United
6 States occupies a fiduciary relationship with Native dependent
7 peoples other than Indians over which it assumes control. E.g.,
8 Eric v. Secretary of HUD, 464 F.Supp. 44, 46-47 (D.Alaska 1978)
9 (Alaska Natives).

10 The TTPI's attempts to functionally equate itself with
11 conventional American territorial governments is unpersuasive.
12 The TTPI's basic thesis is that the TTPI, like a conventional
13 territorial government, stands merely in a relation of "government
14 to governed." There are two crucial distinctions between the
15 TTPI and the conventional territorial governments.

16 First, the conventional territorial governments are
17 formally part of a federal system under United States sovereignty.
18 They function primarily as political subdivisions of the United
19 States. See, e.g., U.S. v. Wheeler, 435 U.S. 313, 98 S.Ct. 1079,
20 55 L.Ed.2d 303 (1978). In contrast, the TTPI government exists
21 solely for the purpose of fulfilling the United States' Trustee-
22 ship Agreement obligations. Gale v. Andrus, 643 F.2d at 830. As
23 the Oppenheim treatise cited by the parties reflects, "the relation
24 of trust... implies fundamentally a relation of service and
25 delegation wholly incompatible with any exclusiveness of rights
26 of sovereignty." L. Oppenheim, International Law, § 94n at 237.

1 Although the TTPI may be structurally similar to other
2 territorial governments and similarly subject to plenary federal
3 control, its reasons for existence - the fulfillment of an inter-
4 national United States trust obligation - are completely unique.
5 Moreover, under Trusteeship Agreement Article 3, the authority
6 which the TTPI exercises on behalf of the United States is exer-
7 cised "subject to" the specific obligations to Microresians which
8 the Agreement establishes. No conventional territorial government
9 operates under a comparably qualified grant of authority. As
10 this Court noted in Sablan Construction Co. v. Trust Territory,
11 526 F.Supp. 135, 141 (D.N.M.I.App.Div. 1981), the TTPI High Court
12 itself has characterized the TTPI government as "'merely a name
13 under which the United States carries out its obligations as
14 Administering Authority under the Trusteeship Agreement.' Alig
15 v. Trust Territory, 3 T.T.R. 64, 67 (H.C.Tr.Div. 1965), aff'd 3
16 T.T.R. 603, 612 (H.C.App.Div. 1967)".

17 Second, the TTPI is distinguishable from conventional
18 territorial governments because it governs without the consent of
19 the governed. Although other territorial governments operate
20 pursuant to congressionally enacted organic legislation, their
21 chief executives and local officials are popularly elected and
22 locally controlled. The TTPI government consists of the High
23 Commissioner and the High Court. The 9th Circuit specifically
24 recognized in People of Saipan that "the High Commissioner's
25 authority does not come from the people of the Trust Territory
26 nor do they have any method of removing him when dissatisfied
with his actions or policies.'" 502 F.2d at 98 n.10.

1 For the reasons stated above, this Court concludes that
2 the Trusteeship Agreement creates an express trust at least as to
3 land in the islands. Trusteeship Agreement Article 6.2 is un-
4 equivocally clear: the TTPI, to the same extent as the United
5 States itself¹⁰ is legally bound to protect the area's inhabitants
6 against the loss of their lands. Moreover, as the 9th Circuit
7 squarely decided in People of Saipan, this obligation is an
8 "affirmative" duty. 502 F.2d at 96. It is factually undisputed
9 that the TTPI neither attempted to restore Palacios' father to
10 possession of his property, offered compensation for its taking,
11 nor otherwise affirmatively acted to redress the admitted taking.

12 Therefore, as we find that the TTPI stands in a fidu-
13 ciary relationship as trustee to the peoples of the Trust Terri-
14 tory, we hold that the TTPI is barred from asserting the statute
15 of limitations as a defense in this case.

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17 4.

18 [7,8] The record presents an additional issue which was
19 raised below but not briefed on appeal. The issue is whether the
20 Court may affirm as to the TTPI on laches grounds notwithstanding
21 the unavailability of the limitations statute. As noted above,
22 Restatement § 219 provides that a trustee may be insulated by
23 laches even though the limitations statute affords no protection.
24 The TTPI has affirmatively pleaded laches. Under § 219(1),
25 comment a, the factors which the Court would balance are:

26 ¹⁰People of Saipan, 502 F.2d at 98.

1 "(1) The length of time which has
2 elapsed between the commission
3 of the breach of trust and the
4 bringing of suit; (2) whether the
5 beneficiary knew or had reason to
6 know of the breach of trust; (3)
7 whether the beneficiary was under
8 an incapacity; (4) whether the
9 beneficiary's interest was pre-
10 sently enjoyable or enjoyable only
11 in the future; (5) whether the
 beneficiary had complained of the
 breach of trust; (6) the reasons
 for the delay of the beneficiary
 in suing; (7) change of position
 by the trustee, including loss of
 rights against third persons; (8)
 the death of witnesses or parties;
 (9) hardship to the beneficiary if
 relief is not given; (10) hardship
 to the trustee if relief is given."

12 In addition, 219(1) comment b states:

13 "The length of time necessary to
14 bar the beneficiary from holding
15 the trustee liable for breach of
16 trust depends upon the circumstances.
17 In the absence of special circum-
18 stances the beneficiary is barred
19 if the period of the Statute of
20 Limitations applicable to actions
21 at law in analogous situations has
22 run." (emphasis added)

23 The question thus becomes a "special circumstances" inquiry.

24 Palacios justifies the delay in filing suit on three
25 "special circumstance" grounds: (1) her father did not comprehend
26 English; (2) he had no access to legal advice until 1962¹¹; and
 (3) a TTPI land officer affirmatively misled him in the 1950's to
 believe that he could not sue the government for compensation.

27 Defendants respond with Camacho v. U.S., 494 F.2d 1363 (Ct.Cl. 1974)

28 ¹¹The trial court specifically accepted this second assertion
 (TR 43 - the court's reference to "Mr. St. Pierre" refers to
 the first private attorney to arrive on Saipan after the
 lifting of security close in 1962).

1 In Camacho, plaintiff sought compensation under the 5th
2 Amendment for the United States' post-war assumption of control
3 over Saipan land, which plaintiff's father once owned and which
4 the Japanese allegedly coerced the father to convey in the 1930's.
5 The court dismissed for failure to file within the six-year Court
6 of Claims limitation statute. It added that the father's ignorance
7 of 5th Amendment rights due to lack of counsel would not toll the
8 statute. Id. at 1370. It cited only Court of Claims precedents
9 for this conclusion.

10 Camacho is distinguishable from Palacios in a signifi-
11 cant respect. The Court of Claims was applying a federal limita-
12 tions statute applicable only to that court. (28 U.S.C. § 2501).
13 The court of Claims has made clear that more flexible and equitable
14 considerations may be entertained by courts applying "local"
15 statutes such as 6 TTC § 302. See Capoeman v. U.S., 440 F.2d
16 1002, 1005 (Ct.Cl. 1971) (discussing Chisholm v. House, cited
17 supra).

18 Palacios' lack of counsel argument implicates important
19 Trusteeship Agreement considerations. Under Article 6.1, the
20 United States must establish a territorial legal system and, in
21 doing so, give due recognition to indigenous custom and conditions.
22 There were no private attorneys available on Saipan until the
23 1962 lifting of federal security restrictions on entry into
24 Saipan. See, e.g., Jatios v. Levi, 1 T.T.R. 578, 585 (H.C.App.Div.
25 1954) (Marshall Islands case in which the court recognized that
26 "trained lawyers... are generally not available to most Micronesians

1 as a practical matter for civil actions in most parts of the
2 Trust Territory"). See generally D. McHenry, Micronesia: Trust
3 Betrayed. Carregie Endowment for International Peace, Washington,
4 D.C. (1975) (describing the security closure of Saipan between
5 1951 and 1962)

6 In determining if "special circumstances" exist for
7 laches purposes, it is also important to consider the state of
8 federal and Trust Territory law prior to 1974: before People of
9 Saipan, Trusteeship Agreement claims were non-justiciable. In
10 Pauling v. McElroy, 164 F.Supp. 390, 393 (D.D.C. 1958) aff'd on
11 other grounds 278 F 2d 252 (D.C.Cir. 1958), cert.denied 364 U.S.
12 835, 81 S.Ct. 61, 5 L.Ed.2d 60 (1960), the court held that the
13 Trusteeship Agreement is unenforceable. Moreover, the same view
14 historically has been adopted by the High Court. See Olsen,
15 supra, 15 Columbia J. Transnat'l L. at 485. Until at least 1974,
16 when the 9th Circuit decided People of Saipan, Micronesian plain-
17 tiffs were without any forum in which to ^{enforce} Trusteeship Agreement
18 claims.

19 Nevertheless, there are countervailing equities favoring
20 the TTPI's position. First, it is evident that neither Palacios
21 nor her father contested the 1953 Land Title Determination which
22 reserved the TTPI's interest in the record.¹² This could be inter-
23 preted as a lack of diligence in asserting rights to the property.¹³

24 Second, the passage of time undoubtedly has eliminated potential

25 ¹² However, both the Determination and Land Management Regulation
26 No. 1, which provides for Determination appeals, are written
in English. Query whether these documents could reasonably
impart notice of the right to appeal to non-English speaking
people.

¹³ Compare Santos v. TTPI. 1 T.T.R. 463, 469 (H.C.Tr.Div. 1958)

1 witnesses and evidence, and would make a trial very difficult to
2 conduct. Additional equitable considerations may also be present.

3 For these reasons, we remand this case to the trial
4 court for further proceedings on the issue of laches.

5
6 B. CNMI/MPLC

7 [9] Neither the CNMI nor MPLC is a trustee under the
8 Trusteeship Agreement. In the absence of facts supporting
9 estoppel, these defendants may invoke the statute of limitations.
10 Section 7 of the NMI Constitution's Transitional Matters Schedule
11 authorizes the future repeal of the statute, and thus implicitly
12 endorses defendants' present right to assert the defense. Estab-
13 lished case law refutes Palacios' contention that statutes of
14 limitations violate the United States Constitution. See, e.g.,
15 Chase Securities Corp. v. Donaldson, 325 U.S. 304, 312, 65 S.Ct.
16 1137, 1141, 89 L.Ed. 1628 (1945); Ackerman v. Port of Seattle,
17 348 P.2d 664, 667 (Wash. 1960).


18 [10] It is undisputed that the CNMI and MPLC hold the road
19 property as transferees from the TTPI. Palacios did not allege
20 that the CNMI and MPLC assumed possession with notice of the
21 TTPI's alleged breach of trust. Restatement § 288 provides for
22 transferee liability only if the transferee takes with notice of
23 the trustee's breach. Therefore, the Court holds for the CNMI
24 and MPLC. A prior decision of this Court has implicitly applied
25 the principle above. See Toves v. Salas, DCA No. 80-9009 (D.N.M.I.
26 App.Div. Jan. 21, 1981)(per curiam)(applying 6 TTC § 302 to a

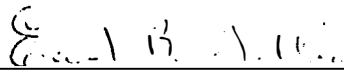
1 defendant's counterclaim for reconveyance from a private party of
2 land which the TTPI had transferred to the party).

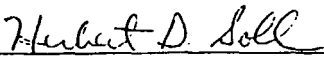
3
4 IV. CONCLUSION

5 For the reasons stated herein, the decision of the
6 trial court granting summary judgment against Palacios is affirmed
7 as to CNMI and MPLC and reversed as to the TTPI. The cause is
8 remanded to the trial court for proceedings not inconsistent with
9 this opinion.

10
11 DATED this 17th day of June, 1983.

12
13 
14 _____
15 ALFRED LAURETA
16 United States District Judge

17
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19 _____
20 EARL B. GILLIAM
21 United States District Judge

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25 HERBERT D. SOLL
26 Designated Judge

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F. L. F. D.
Clerk
District Court

AUG 13 1983

For the Clerk of the District Court
by *[Signature]*

IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS
APPELLATE DIVISION

FRANCISCA T. PALACIOS,)	CIVIL APPEAL NO. 82-9017
)	(CTC CIV. NO. 79-204-A)
Plaintiff-Appellant,)	
)	
vs.)	<u>AMENDMENTS TO OPINION</u>
)	
COMMONWEALTH OF THE NORTHERN)	
MARIANA ISLANDS, MARIANS)	
PUBLIC LAND CORPORTION,)	
SANTIAGE C. TUDELA, and THE)	
TRUST TERRITORY OF THE)	
PACIFIC ISLANDS,)	
)	
Defendants-Appellees.)	

The Opinion of June 27, 1983 shall be amended as follows:

Page 3, line 13 is amended to read: "Appellant filed this action on November 2, 1979."

Page 17, lines 15-18 are amended to read: "Until at least 1974, when the 9th Circuit decided People of Saipan, Micronesia plaintiffs were without any forum in which to enforce Trusteeship Agreement claims."

DATED this 11th day of August, 1983.

Alfred Laureta *Earl B. Gilliam* *Herbert D. Soll*
 JUDGE ALFRED LAURETA JUDGE EARL B. GILLIAM JUDGE HERBERT SOLL