LUIS CEPEDA CRISOSTIMO, EMILIA CRISOSTIMO LIZAMA, CONCEPCION CRISOSTIMO BABAUTA, MARIANA CRISOSTIMO PANGELINAN, and other heirs of the Estate of Jose Crisostimo, Plaintiffs-Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendant-Appellee

Civil Appeal No. 120

Appellate Division of the High Court

Mariana Islands District

April 14, 1976

Action to recover land. The Appellate Division of the High Court, Hefner, Associate Justice, affirmed trial court's judgment that appellants' claim was stale in that they failed to use diligence required by law to rescind land exchange agreement.

1. **Appeal and Error—Evidence—Conflicting**

   Where there was some conflict in testimony as to whether government was aware of at least one heir's pre-exchange objection to land exchange made pursuant to exchange agreement entered into by government and land trustee appointed by land title officer, it was for trial court, not appellate, to resolve such conflict, and trial court's findings would not be set aside unless clearly erroneous. (6 TTC § 355(2))

2. **Land Management Regulation—Land Trustee—Authority**

   Each land exchange affected by a land trustee appointed pursuant to Land Management Regulation must be considered on its own merits to determine if one dealing with land trustee could rely on his authority to deal with land. (Land Management Regulation No. 1)

3. **Land Management Regulation—Land Trustee—Authority**

   Where oldest son of deceased lot owner filed original claim on behalf of decedent's heirs, was the only heir to appear at original land title hearing pursuant to Land Management Regulation, even though record reflected that all known heirs were given notice, was successful in defeating government's claim to lot in question, and was appointed land trustee by land title officer at that hearing, and where oldest son's oldest sister indicated that according to custom the oldest son should act for heirs, and oldest son's brother, by deposition, admitted that land trustee was acting as family "spokesman" at original hearing, government could rely on oldest son as land trustee to make exchange of lot in question for other lands owned by government. (Land Management Regulation No. 1)

4. **Appeal and Error—Reviewability of Issues—Issues not Briefed**

   Appellate review is generally limited to matters complained of or points

raised in the appeal, but appellate court may take up point of law on its own motion if there is a basis for it in record.

5. **Appeal and Error—Applicable Law—Stipulation of parties**

Reviewing court is not bound to accept concessions of parties as establishing the law applicable to a case, and where a particular legal conclusion follows from a given state of facts no stipulation of counsel can prevent court from so declaring.

6. **Appeal and Error—Applicable Law**

Where defense of laches was urged below and found to exist, for defendant to state that it was not an issue on appeal was statement which appellate court must and would ignore.

7. **Contracts—Voidable Contracts—Exceeding Authority to Contract**

If land trustee appointed pursuant to Land Management Regulation sells or exchanges land without consent of all parties having an interest in land, and other party, under facts of the case, cannot rely on his authority to sell or exchange the land, transaction is voidable and not void. (Land Management Regulation No. 1, § 9(a))

8. **Contracts—Voidable Contracts—Exceeding Authority to Contract**

There is nothing in Land Management Regulation No. 1 which would make a sale or exchange without full approval of all concerned a void contract. (Land Management Regulation No. 1)

9. **Contracts—Void Contracts—Generally**

Void contract is no contract at all and it binds no one as it is a nullity.

10. **Contracts—Voidable Contracts—Generally**

Voidable contract is valid and binding until it is voided by party entitled to avoid it.

11. **Contracts—Voidable Contracts—Particular Cases**

Appellants, heirs to deceased lot owner, not having given their approval to land trustee to exchange lot in question for other lands, owned by government, would have standing to sue to avoid the exchange. (Land Management Regulation No. 1, § 9(a))

12. **Limitation of Actions—Recovery of Land**

If a person in possession of land is claiming adverse possession and there is no document to rescind, and landowner sues for recovery of his land, twenty-year statute of limitations would apply.

13. **Limitation of Actions—Recovery of Land—Particular Cases**

Where government was in possession of land under color of title, deed to such land recorded fourteen years before action to recover land was filed could not be blithely ignored and circumvented by saying that plaintiffs' suit was one to recover land which would require passage of twenty years before a voidable land exchange agreement could mature into a final contract.

14. Limitation of Actions—Recovery of Land—Particular Cases

Where heirs' action against government was filed fourteen years after recording of land exchange agreement entered into by government and land trustee and agreement was not agreed to by heirs as required by Land Management Regulation, and heirs' prayer for relief asked that exchange agreement be voided, action was for rescission, not for a quiet title suit or recovery of land, so that six-year "catch-all" statute rather than twenty-years statute of limitations applied. (Land Management Regulation No. 1, § 9(a); 6 TTC § 305)

15. Laches—Particular Cases

In an action by heirs to recover land exchanged for other lands, owned by government, pursuant to an exchange agreement entered into between land trustee and government which was not agreed to by heirs as required by Land Management Regulation, Trial Court's finding of laches was not clearly erroneous where review of record, in response to appellants' claim that they relied, with good faith, on government's assurances that they would get property back, revealed that letter issued over seven years before appellants filed their complaint, in response to their inquiry about return of land, stated only that government was planning on establishing a land-use policy and that appellants' request would be held in abeyance; appellants' complaint was stale since they failed to use diligence required by law to rescind land exchange agreement. (Land Management Regulation No. 1, § 9(a); 6 TTC § 305)

Counsel for Appellants: DAVID ALLEN of Micronesian Legal Services Corporation

Counsel for Appellee: LINSEY FREEMAN, *District Attorney,* Mariana Islands District

Before BROWN, *Associate Justice*, HEFNER, *Associate Justice*, and WILLIAMS, *Associate Justice*

HEFNER, *Associate Justice*

This matter concerns the appellants' attempt to obtain the return of Lot 1351 situated at Garapan, Saipan, Mariana Islands.

The history of the land is fairly clear. After the United States military forces seized the land from the Japanese in 1944, the government possessed the property. A land title hearing was held in 1953 and 1954 which determined that the property was the property of "The heirs of Jose

Crisostimo represented by Joaquin Crisostimo, Land Trustee." Shortly thereafter, a land exchange agreement was entered into by the Government and Joaquin Crisostimo whereby Lot 1351 was to be exchanged for other property owned by the Government. It was not until about two years later that deeds were actually signed for the exchange.

The appellants attack the exchange on several grounds and assert that a valid transfer never occurred and that Lot 1351 still belongs to the heirs of Jose Crisostimo. We cannot find any merit in the appellants contention.

The original claim to Lot 1351 was filed by Joaquin Crisostimo in 1950, on behalf of the heirs of Jose Crisostimo, deceased. The record reflects all of the known heirs were given notice of the original hearing concerning the land in question which was held on July 9, 1953; yet only Joaquin Crisostimo appeared to champion the cause of the heirs of Jose Crisostimo. Joaquin continued to represent the heirs before the Land Title Officer and was successful in defeating the Government's claim to the land in question.

Quite naturally, this is not what the appellants complain about. Their complaint concerns the appointment of Joaquin as Land Trustee and the subsequent exchange of the land by him.

The appointment of Joaquin as Land Trustee was made pursuant to Land Management Regulation No. 1. This regulation had been in effect for many years and the appellants do not contest its validity.

The purpose of Land Management Regulation No. 1 is obvious. In the absence of adequate probate procedures where a formal court decree distributes the land to named individuals, the appointment of a Land Trustee is a reasonable alternative. In cases such as the land hearing and determination in question here, the appointment is

often accomplished at the same time as the determination. As pointed out by the land officer at the hearing, it would have been very difficult, if not impossible, to do otherwise. (Raker Deposition page 10, Lines 18–23) Exactly what alternative the appellants suggest is not clear. Certainly, if the determination placed title in Joaquin's name alone, they would object. If the determination just recited that the land was owned by the "heirs of Jose Crisostimo," the problem of determination of the heirs would still remain but the additional practical problem arises, in that for all intents and purposes the land would be immersed in a legal quagmire, prohibiting any use of the property or causing a continuous question as to title. The longer the time, the more complex the determination of "heirs" becomes. However, with the appointment of a person having an interest in the land as a Trustee, there is at least an individual present who can be called upon to represent the interests in the property.

The heirs are protected in Land Management Regulation No. 1. Section 9(a) provides in part:

> A Land Trustee may not sell or otherwise dispose of the land or any interest therein except a lease not exceeding one year, except with the approval of all parties having an interest in the land or of the Trial Division of the High Court.

Section 9(c) provides:

> Any questions of the propriety of the actions of the Land Trustee shall be referred to the Trial Division of the High Court. A Land Trustee shall be accountable for all assets, land receipts and disbursements as is a Trustee under the laws of the United States.

Thus, several things are accomplished by Land Management Regulation No. 1. It provides a reasonable method to solve the problem where there are known or unknown heirs who have an interest in land and it prescribes limitations on the Land Trustee, protection for the heirs and a remedy for

them. To interpret Land Management Regulation No. 1 to require that anyone dealing with the Land Trustee must ascertain if all of the heirs agree with the Land Trustee's actions simply negates the purpose of the regulation. This is in essence what appellants wish the Court to proclaim. The crux of the appellants' argument is that they should have been formally notified that Joaquin would be appointed Trustee at the land hearing. They deny ever selecting Joaquin as Trustee and therefore deny his existence as such, and claim any actions on his part are void.

Since the original claim filed with the Land Title Officer indicated the land was claimed by the heirs of Jose Crisostimo, deceased, the natural course of events was to appoint someone as Land Trustee pursuant to Section 9 of Land Management Regulation No. 1. Joaquin was the logical choice since he filed the original claim, was the oldest son of Jose Crisostimo, and the only heir to appear at the original hearing.

The heirs, having had notice of the hearing and benefiting from Joaquin's actions, must have known or should have known that some disposition of their claim would be made.

One of the plaintiffs, Emilia Lizama, Joaquin's older sister indicated that according to custom the oldest son should act for the heirs. Another of the plaintiffs, Luis Crisostimo, Joaquin's brother, admitted in his deposition that Joaquin was acting as the family "spokesman" at the first hearing before the Land Title Officer. In addition to representing the plaintiffs in the land matter, Joaquin also continued to represent them as late as October 28, 1966, when he filed a claim for "all legal heirs" of the mother of plaintiffs with the War Claims Commission.

[1] At the initial hearing before the Land Title Officer on July 9, 1953, almost one year before the issuance of the

title determination and three years prior to the actual exchange, Joaquin indicated a willingness to exchange Lot 1351 for Government land being used by other heirs in the east and south districts—the lands actually exchanged three years later. Although appellants contend that the Government was aware of at least one of the heir's objection to the land exchange before the actual exchange, there is some conflict in the testimony of this point and it is for the Trial Court, not the Appellate to resolve such conflicts. *Fattun v. Trust Territory*, 3 T.T.R. 571.

For the record, it is clear the exchange agreement was not unfair nor involved any over-reaching by the Government. The Government deeded away almost twice as much property as it received. Two years elapsed between the time the exchange agreement was executed and the deeds were finally exchanged which negates any inference of a speedy, clandestine and fraudulent exchange as the plaintiffs would have us believe.

[2, 3] Each land exchange affected by a Land Trustee appointed pursuant to Land Management Regulation No. 1 must be considered on its own merits to determine if the one dealing with the Land Trustee could rely on his authority to deal with the land. In this case, considering the history before the exchange of deeds, as set forth above, and the relationship of the Land Trustee to the appellants, we hold that the Government could and did rely on Joaquin Crisostimo to make the exchange of the land.

The Court would be remiss if it did not discuss a crucial matter of law which has permeated this matter since its inception and pursuant to 6 TTC § 355(2), there is no restraint in reviewing the law of laches as it applies to this case and which may be applicable to other cases pending or not yet filed.

The Government pled the affirmative defense of laches and this issue was a vital part of the trial and the Trial

Court made a definitive and thorough finding that laches had occurred.

The appellants expressly addressed themselves to this issue in their brief devoting several pages to the issue. The appellee then filed its brief with a rather astounding statement that "Laches is not in issue in this case."

[4, 5] It is clear that the general rule is that appellate review is generally limited to matters complained of or points raised in the appeal. *Baltimore & P.S.B. Co. v. Norten*, 284 U.S. 408, 52 S.Ct. 187, 76 L.Ed. 366; 5 Am.Jur.2d Appeal and Error § 723. An Appellate Court may take up a point of law on its own motion if there is a basis for it in the record. The reviewing court is not bound to accept concessions of the parties as establishing the law applicable to a case. *Desny v. Wilder*, 299 P.2d 257 (Cal. 1956). Parties cannot validly stipulate as to the legal conclusion to be drawn other than the facts of a case nor require the Court to draw other than the legal and natural conclusion from given premises. Therefore, where a particular legal conclusion follows from a given state of facts, no stipulation of counsel can prevent the Court from so declaring. *San Francisco Lumber Co. v. Bibb*, 139 Cal. 325, 73 P. 864; 92 A.L.R. 670, 15 A.L.R. 726.

[6] This is even more apparent in this case where the Government urged the defense of laches and the Trial Court found that it existed. For the Government to state it is not an issue is a puzzling and ineffective statement which the Court must and shall ignore.

The appellant meets the issue of laches by arguing that since the twenty-year statute of limitations had not run, laches cannot be found. At the same time, the appellants concede that the doctrine of laches may apply for a shorter time than the applicable statute of limitations if there is some prejudice to the defendant resulting from the passage

of time. Citing *Patterson v. Hewitt*, 195 U.S. 309, 25 S.Ct. 35 (1904).

In this case a determination must be made as to the gravamen of the plaintiff's lawsuit. Clearly, it is based on the exchange and the effect of Section 9 of Land Management Regulation No. 1.

[7, 8] After reviewing that section, it is concluded that if a Land Trustee does sell or exchange land without the consent of all the parties having an interest in the land, and the other party, under the facts of the case, cannot rely on his authority to sell or exchange the land, the transaction is voidable and not void. The section does not state a sale or exchange is void. Section 9(c) allows a procedure for the parties to settle questions of the propriety of the Land Trustee's actions. The general intent and design of Land Management Regulation No. 1, Section 9, is to resolve an impasse that may occur when there are too many people to deal with. As pointed out, the Land Trustee is accountable to the others holding interests in the land. In short, there is nothing in Land Management Regulation No. 1 which would make a sale or exchange without full approval of all concerned a void contract.

[9–11] A void contract is no contract at all and it binds no one as it is a nullity. 17 Am.Jur.2d, Contracts § 7. On the other hand, a voidable contract is valid and binding until it is avoided by the party entitled to avoid it. 17 Am.Jur.2d Contracts § 7. Therefore, in this case, the parties not giving their approval would have standing to sue to avoid the exchange. Although a void contract need not be rescinded, it is otherwise with respect to voidable contracts, 17 Am.Jur.2d, Contracts § 501.

Of course, this is exactly what the appellant did and the prayer of their complaint (Paragraph 1) asks that the exchange agreement dated June 26, 1954, be voided.

[12, 13] It then becomes clear that the gravamen of the complaint of the plaintiffs is a rescission suit and not a quiet title suit or a suit to recover land. If a person in possession of the land is claiming adverse possession, there is no document to rescind and the action by the land owner is for the recovery of his land and the twenty-year statute of limitations will apply. However, the Government is in possession of the land under color of title, a document which was recorded 14 years before the action was filed. The document cannot be blithely ignored and circumvented by saying that the plaintiff's suit is one to recover land. What the appellants urge is to require twenty years before a voidable land exchange agreement can mature into a final contract. This is not consistent with the general purpose of the law to limit the uncertainty of certain acts to a reasonable time.

The usual grounds for rescission are fraud, mistake or duress. However, in this case a different situation occurs. The ground of the appellants rescission suit is their failure to agree to the exchange and pursuant to Section 9(a), they claim the exchange should be voided. In any event, the essence of the action is to rescind a transaction and place the parties, as near as possible, back into their original positions. We find the reasoning of *Burton v. Terrill*, 368 F.Supp. 553 (1973) persuasive. In that case, the plaintiff sued the defendant to recover two parcels of land, claiming fraud. The plaintiff asked that the deed be declared null and void. The Court referred to a Virginia statute of limitations similar to 6 TTC § 305. In part it reads:

> Every personal action, for which no limitation is otherwise prescribed, shall be brought within five years next after the right to bring the same shall have accrued . . . .

The Court in *Burton* rejected the plaintiff's argument that the action was one for the recovery of land which allowed a longer time to bring suit. It held that the statute

of limitations for suing for the recovery of land generally related to adverse possession and "is not applicable to a situation where a vendee has a valid deed of bargain and sale which the vendor contends he was fraudulently induced to execute." (at page 557)

[14] This action is not one against the Land Trustee but against the Government. The Trial Court inferentially made 6 TTC § 304 "available." We do not think this statute is applicable. However, 6 TTC § 305, the so-called "catch all" statute is applicable and is the proper statute of limitations to apply.

The appellants do not claim or argue that if the six-year statute is applied, laches does not apply. Indeed, the record is more than sufficient to find that the appellants knew of the exchange more than six years before suit was filed in 1970. One of the appellants knew as far back as 1956.

[15] The last attack the appellants make on the Trial Court's finding of laches is that the Government caused the appellants to, in effect, hold off on filing their lawsuit. It is stated that the appellants, with good faith, relied on Government assurances that they would get the property back. The Trial Court specifically found that no such assurances were made and a review of the record certainly does not indicate this was clearly erroneous. 6 TTC 355(2). The testimony of Luis Crisostimo, the testimony of the ex-Government officials regarding the policy of the return of exchange lands, and plaintiff's exhibits 3 and 4 fail to support the appellants "reliance." Plaintiff's exhibit 3, which was the Government's response to an inquiry of the appellants about the return of the land, was certainly nothing that a reasonable person could rely upon as assuring them they would have the land returned. The letter only states that the Government was planning on establishing a land-use policy and that the appellants' request would be held in abeyance. It must be noted that this

letter was issued in August of 1963, yet the appellants still waited over seven years to file their complaint.

The Trial Court's conclusion was correct. The appellants' claim is stale. They failed to use the diligence required by the law and their attempt to rescind the land exchange agreement must fail.

The judgment is hereby AFFIRMED.

PONAPE FEDERATION OF COOPERATIVE ASSOCIATIONS, et al., Appellants

v.

RONALD A. PETERSON, Director of the Department of Finance of the Trust Territory of the Pacific Islands, Appellee and TRUK FISHERIES COOPERATIVE ASSOCIATION, a non-profit cooperative association, Appellant

v.

RONALD A. PETERSON, Director of the Department of Finance of the Trust Territory of the Pacific Islands, Appellee and TRUK COOPERATIVE ASSOCIATION, a non-profit cooperative association, Appellant

v.

RONALD A. PETERSON, Director of the Department of Finance of the Trust Territory of the Pacific Islands, Appellee

Civil Appeal Nos. 139 & 151

Appellate Division of the High Court

April 23, 1976

Appeals from Trial Division judgments that cooperatives were subject to gross revenue tax. The Appellate Division of the High Court, Hefner, Associate Justice, affirmed, holding that a cooperative, by its very nature, is a "business" carried on for pecuniary profit for economic benefit, subject to gross revenue tax.

1. **Taxation—Gross Revenue Tax—Construction**

   Term "for pecuniary profit" in statute defining "business" subject to gross revenue tax means for the profit of stockholders or members, and is a general term, not a word of art, and includes any entity or undertaking which makes money. (77 TTC § 251(8))