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14
15 **IN THE SUPERIOR COURT OF GUAM**
16 **HAGÁTÑA, GUAM**

17 GOVERNMENT OF GUAM,) CIVIL CASE NO. CV1124-09
18)
19 Plaintiff,)
20)
21 vs.)
22)
23 HELENE TORRES and EVELYN)
24 O'KEEFE, in their capacities as)
25 CO-ADMINISTRATRIXES OF THE)
ESTATE OF JOSE MARTINEZ TORRES,)
and THE ESTATE OF JOSE MARTINEZ)
TORRES,)
Defendants.)

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2 **MOTION**

3 Pursuant to GRCP Rule 56 and consistent with the Court’s July 29, 2010 Decision and
4 Order, plaintiff government moves for summary judgment for reformation of the deed in
5 question, declaratory judgment, quieting of title, and the imposition of a constructive trust, all as
6 prayed for in the Third Amended Complaint herein.

7
8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

9 **UNDISPUTED FACTS**

10 The following facts are material and beyond genuine dispute:

11 1. A claim was brought before the Guam Ancestral Lands Commission (“GALC” or
12 “Commission”) in 2006 on behalf of the Estate of Jose Martinez Torres (“the Estate”) for Lots
13 AL-002, AL-002-1, and AL-002-2 (“the Lots”) in the Commission’s inventory.

14 2. A copy of the evidence presented to the Commission was submitted to the Court
15 on March 8, 2010 as **Exhibit 2 Re: Motion for Summary Judgment**. It is voluminous and
16 plaintiff government respectfully requests leave of court to incorporate that **Exhibit 2** with this
17 current summary judgment motion. The evidence presented to the Commission was fairly
18 summarized in a Decision and Order dated October 19, 2009 by the Superior Court, the
19 Honorable Alberto C. Lamorena III, in another case, *Estate of Jose Martinez Torres v. The*
20 *Government of Guam*, CV1093-06 (copy of D & O submitted to this Court on November 3,
21 2009), as follows:
22

23 The plot belonged to Pedro M. Duarte prior to 1914. On
24 January 14, 1914, Mr. Duarte purported to sell the land including
25 the plot at issue to Jose Torres Martinez for \$4,000, of which Mr.

1 Martinez immediately paid \$2,000. In 1915, assets of Mr. Duarte
2 were seized by the Naval Government of Guam and placed up for
3 public auction to cover restitution from Mr. Duarte's conviction for
4 embezzlement during his service as Postmaster. One of the assets
5 listed for auction was the land in Dededo that included the plot at
6 issue. Mr. Martinez requested the asset be removed, and this
7 request was initially granted by Judge Luis Torres. However, the
8 Governor of Guam declared the judgment null and void, which
9 was followed by an April 13, 1915 decree by Judge Frank
10 Portusach that reiterated the Governor's position that the existing
11 Mortgage Law and executive general orders had not been properly
12 followed in the sale.

13 Mr. Martinez's attempts at appealing this decision or
14 having his \$2,000 returned to him were rebuffed, and the land was
15 put up for auction. After no bidders matched the minimum request
16 by the government, the government had the property adjudicated to
17 itself.

18 3. On behalf of the Estate it was maintained before the Commission that the above-
19 described was an injustice, that it resulted in a taking of land from Mr. Jose Martinez Torres, and
20 that it was remediable under the Guam Ancestral Lands Act, 21 GCA §80101 et seq. ("the Act").

21 4. The purpose of the Act is generally to return to original owners, or their heirs,
22 lands condemned by the federal government in the World War II era, and as early as 1930, that
23 were later conveyed by the federal government to the government of Guam in the 1990s pursuant
24 to U.S. Public Law 103-339, "An Act to Provide for the Transfer of Excess Lands to the
25 Government of Guam." Under the Ancestral Lands Act, *Ancestral Lands* is defined as "those
lands privately owned by residents of Guam on or after January 1, 1930." 21 GCA §80101(a).
Ancestral Lands Title is defined under the Act as "that right and interest entitling an owner or
owner's descendants to the repossession of property taken by the United States of America or the
government of Guam on or after January 1, 1930, having thereafter been declared excess or,
where not declared excess, in exchange therefore." 21 GCA §80101(b).

1 5. The Act requires that *non-ancestral* lands that are conveyed by the Federal
2 government to the government of Guam are to be held in trust by the Commission and
3 administered so as to provide just compensation for ancestral land owners who, by virtue of
4 continued government or public benefit use, cannot regain possession to their ancestral lands. 21
5 GCA §80104(e).

6 6. At the close of the hearings before the Commission, on September 20, 2006, there
7 were three lawyers arguing for the Estate. The Commission did not have legal counsel. The
8 following exchange took place between the Commission and the three lawyers, in which the
9 Commission orally imposed a condition or conditions upon the awarding of the Lots to the Estate
10 (Transcript of the September 20, 2006 hearing, pages 25–33 thereof, submitted herewith as
11 plaintiff's **Exhibit 1**):

12
13 MR. CHARFAUROS: I'd like to ask the family to clarify something
14 for the commission. What is the pleasure of the – what is the request before
15 this commission at this point in time? So I'll make sure that whatever motion
16 that we're going to make would be clear. So can the – a representative of the
17 family state to the commission, what is its official request before us?

18 MR. MANTANONA: In which you -- if I may, for the Commissions
19 pleasure. Your Honor, at this point, we are asking that the commission award,
20 recognize the claims of the heirs of Jose Torres Martinez – Martinez Torres,
21 for the lots as contained in 2531 and 1540.

22 Today, recognized by Ancestral Lands Commission on their own
23 documentation as Lots AL002, Lot AL002-1, and Lot AL002-2. We believe
24 that this will extinguish all claims that the family have to any and all
25 properties inside the Ancestral Lands inventories.

26 MR. CHARFAUROS: Okay. All right. Madam Chair? If there's no
27 other questions by the other commission member, I'd like to make a motion
28 and my motion would be basically to be in line with the request of the family
29 to recognize the claim to the estate of the lots mentioned herein on the record,
30 which would also extinguish all claims to the Duarte Estate. And also that
31 this be a conditional deed that you still have to go to the courts and go through

1 the regular court proceedings to -- and correct me if I'm wrong, is that going
2 to the court proceedings to review this claim and the court will make the final
3 judgment on the claim.

4 MR. YANZA: That is correct Mr. Chairman. On behalf of the estate,
5 neither I myself, Mr. Mantanona and Mr. Razzano or Mrs. O'Keefe can
6 declare that we hereby terminate all future claims to ancestral lands. But, as
7 we saw fit best for the estate, we are willing to go before the probate court and
8 the probate estate of Mr. Torres and request the court that they, the Court,
9 approves the receipt of these ancestral lands and approve the final termination
10 of future claims within the inventory of the commission.

11 MR. CHARFAUROS: And understand this, this is a conditional deed
12 and if the Court comes back that says, that you have absolutely no claim to
13 this property, this property comes right back into the inventory of the
14 Ancestral Lands Commission and that we are not going to rehear this case
15 again. Unless you guys have convincing evidence that has not been reviewed
16 by the Court to rehear the case. Do you understand exactly what this motion
17 is?

18 MR. YANZA: Yes.

19 MR. MANTANONA: Yes, we do.

20 MR. CHARFAUROS: All right. So that's my motion.

21 MR. MANTANANE: I second.

22 MR. CHARFAUROS: Seconded by the --

23 MS. ORLINO: Okay. The motion has been second and now we're
24 going to be voting.

25 MR. CHARFAUROS: Yeah. It wasn't there. There's an
extinguishment.

MS. ORLINO: Yeah.

MR. CHARFAUROS: That this extinguish the Duarte Claim.

MS. ORLINO: All future.

MR. CHARFAUROS: It's a conditional motion.

1 MR. ECLAVEA: That's just for the inventory we have? Or is that for
everything?

2 MR. CHARFAUROS: For everything. Everything.

3 MR. ECLAVEA: So does the family understand that?

4 MR. YANZA: Yes.

5 MR. MANTANONA: For present and future. We believe that we
6 represent about 90 percent of the heirs, of course there's 10 percent so we
7 can't speak for those 10 percent at this point. But we believe that the
8 recommendation from the estate will be that we acknowledge the receipt and
terminate all future interest.

9 MR. CHARFAUROS: Yeah. And understand, I'm not asking the
10 family for permission for this extinguishment. My motion is not asking for
11 permission, I'm making this motion. And this motion is to extinguish this
12 claim and basically, it's up to the Courts and if the Court see fit that this
13 motion is inappropriate then the Courts can rule against that and if the Court
14 sees fit that this claim is invalid, this property would come back to the
inventory of Ancestral Lands Commission. But basically the Court is going to
be the final say so. Do you understand that motion?

14 MR. MANTANONA: Yes.

15 MR. YANZA: Mr. Commissioner? Just to clarify.

16 MR. CHARFAUROS: Yeah.

17 MR. YANZA: This present motion on the floor, this would be a
18 conditional transfer of the properties so long as the court approves it and once
the court approves it --

19 MR. CHARFAUROS: Yes. In other words, where it's a conditional
20 deed that we're giving you. You still have to go to the courts and -- if the
Courts comes back and say yes --

21 MR. YANZA: Okay. We understand that. We accept that.

22 MS. ORLINO: And then it's going to not come before this commission
23 again?

24 MR. MANTANONA: Right, yeah.

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MR. YANZA: No, no. If the court approves of the transfer --

MS. ORLINO: Then it's done deal.

MR. CHARFAUROS: Then it's your then --

MS. ORLINO: It's a done deal, yeah.

MR. YANZA: And then the condition would be satisfied?

MR. MANTANANE: Yeah, right.

MR. CHARFAUROS: If the court rules against it, then it comes -- that property comes back into --

MR. ECLAVEA: Into our inventory.

MR. YANZA: And the transfer will be ineffective?

MR. MANTANANE: Right.

MR. CHARFAUROS: Yes.

MS. ORLINO: Yeah, that's why the extinguishment is there to let you know.

MR. YANZA: Yes.

MS. ORLINO: Okay?

MR. CHARFAUROS: So we are approving the -- and my motion is to approve it on the condition that it goes to the court. All right?

MR. ECLAVEA: Okay, we're voting.

MS. ORLINO: Yeah. So go ahead --

MR. ECLAVEA: I approve. I approve.

MS. ORLINO: Commissioner Eclavea?

MR. ECLAVEA: I approve.

MS. ORLINO: Commissioner Matanane?

MR. MATANANE: Approve.

1 MS. ORLINO: Commissioner Charfauros?
2 MR. CHARFAUROS: (approves in the Chamorro language to indicate
3 in the affirmative).
4 MS. ORLINO: Commissioner Laguana?
5 MR. LAGUANA: (approves in the Chamorro language to indicate in the
6 affirmative).
7 MS. ORLINO: Okay. So that -- the request for today has been
8 approved.
9 MR. CHARFAUROS: Did you vote?
10 MS. ORLINO: Yeah, I did.
11 MR. ECLAVEA: Did you vote?
12 MS. ORLINO: I said, yeah. Okay.
13 MR. MANTANANE: All right.
14 MR. ECLAVEA: All right.
15 MR. YANZA: One last issue. So, should we prepare the language of
16 the conditional deed?
17 MR. CHARFAUROS: You've got my --
18 MS. ORLINO: That one would come from --
19 MR. CHARFAUROS: -- and it's going to be prepared, it'll be prepared
20 to the T.
21 MR. YANZA: Okay.
22 MS. ORLINO: Okay. Prepare the preparation and then you'll come
23 before us for review and then it'll --
24 MR. CHARFAUROS: Agree.
25 MS. ORLINO: Yeah. The deed signing.

1 MR. YANZA: Will there be also a record of or a decision and order
issued by the --

2 MR. CHARFAUROS: Yes, yes, yes. There will be.

3 MR. YANZA: Okay

4 MS. ORLINO: That will come from the commission that --

5 MR. CHARFAUROS: I think the next time we meet would be the deed
6 signing ceremony.

7 MR. MANTANANE: Yeah.

8 MR. CHARFAUROS: Okay.

9 MR. MANTANANE: When they --

10 MR. ORLINO: Okay, thank you.

11 MR. YANZA: Thank you.

12 MR. MANTANANE: -- the Governor signs the deed.

13 MR. YANZA: Thank you very much.

14 (Hearing concluded; no time specified)

15
16 7. The Commission never reconvened and reconsidered or changed the oral decision
17 made as above-transcribed at the close of the September 20, 2006 hearing. Declaration of Joey
18 G. Leon Guerrero, submitted herewith.

19 8. The lawyers assured the Commission they understood its decision and suggested
20 that they draft the language of the conditional deed. They did so, but the conditional deed they
21 drafted did not accurately reflect the Commission's oral decision. It failed to clearly require the
22 Estate to take its evidence to a court for review and a decision about it whether it constituted a
23 valid claim under the Act. They drafted the condition paragraph in the deed, located at pages 12-
24 13 thereof (TAC Ex. 1), to read as follows:
25

1 This Quitclaim Deed and the effective transfer of the Property is
2 conditioned on the administrator/trix petitioning the probate court
3 to approve the Jose Martinez Torres Estate's receipt of the
4 Property and to approve the Jose Martinez Torres Estate's
permanent extinguishment and termination of all claims to all other
properties held by the Guam Ancestral Lands Commission
formerly known as As Ukkudo or Estates 2531 and 1540.

5 9. The Commission relied upon the lawyers for the Estate to draft the deed to reflect
6 its decision, and did not have a lawyer of its own review it. As the lawyers for the Estate drafted
7 it, however, the condition paragraph not only failed to clearly reflect the Commission's directive
8 that the Estate take its evidence to a court for review and a judgment on the validity of its claim,
9 it required the Estate to go to a *probate* court and gain approval of its "receipt" of the property.
10 At the September 20, 2006 hearing the Commission never specifically directed the Estate to
11 petition a "probate" court to approve its "receipt" of the property. Only the lawyers used this
12 phraseology, when they indicated that yes, they understood the Commission's decision.
13

14 10. In their ensuing petition to the probate court (**Exhibit 3**), the Estate's lawyers
15 misrepresented, intentionally or negligently, that *probate* court was suggested by the
16 Commission:

17 The Commission suggested, and Mrs. O'Keefe agreed, that a
18 Conditional Deed would be executed to the Estate pending
confirmation of the Probate Court.

19 **Exhibit 3**, June 12, 2007 Petition in PR0220-50, p.3, ll.18-19.

20 11. In that petition to the probate court the Estate's lawyers directed it to the "specific
21 language" of the deed's condition paragraph, but did not disclose that the "specific" language
22 was their own, and not that used by the Commission:

23 The specific language of the Deed for the Property from the
24 Commission ... reads in part as follows:

25 This Quitclaim Deed and the effective
transfer of the Property is conditioned on the

1 administrator/trix petitioning the probate court to
2 approve the Jose Martinez Torres Estate's receipt of
3 the Property and to approve the Jose Martinez
4 Torres Estate's permanent extinguishment and
5 termination of all claims to all other properties held
6 by the Guam Ancestral Lands Commission formerly
7 known as As Ukkudo or Estates 2531 and 1540.

8 **Exhibit 3**, June 12, 2007 Petition in PR0220-50, pp.3-4.

9 12. At the August 30, 2007 hearing on that petition in PR0220-50, *In the Matter of*
10 *the Estate of Jose Martinez Torres*, the Estate's lawyers did not inform the probate court that in
11 addition to what they advised was a "compromise" condition embodied by the "specific
12 language" of the deed, the Commission had also imposed a condition that the Estate go to a court
13 where a decision would be made on the validity of its claim. Thus advised by the Estate's
14 lawyers, the probate court did not, as it jurisdictionally could not in any event, review the
15 evidence and make a decision about whether to "approve the Jose Martinez Torres Estate's
16 receipt of the Property" as being pursuant to a claim that was valid under the Act.

17 13. The probate court did, however, as requested at the August 30, 2007 hearing, sign
18 an Order (**Exhibit 4**), also drafted by the Estate's lawyers, that provides in relevant part:

19 IT IS FURTHER ORDERED that the following parcels of
20 property [including those at issue herein] have been properly
21 received by the Estate through the Ancestral Lands Commission.

22 14. The Estate argued in its September 20, 2010 Motion to Dismiss that at the August
23 30, 2007 hearing in the probate court, that court made a ruling that is final and binding on this
24 Court. But at a June 20, 2008 hearing in PR0220-50, the probate court made clear that it did not
25 determine the Estate's entitlement to the land under the Act. This happened when the
government sought to intervene in the probate proceeding and raise generally the issues raised by

1 its complaint in this case. The following is from the transcript of that June 20, 2008 hearing,
2 plaintiff government's **Exhibit 5**:

3 MR. MASON: Well, we're not asking the Court to
4 quiet title or to amend the deed. We have an order – We have a
5 petition that was presented to the Court, and that pos- -- and that
6 petition misled the Court. Based upon that petition, the Court
7 issued an order ... an order regarding ... regarding the transfer of
8 this property. And this Court certainly has jurisdiction to either
9 change that Order, amend it, or stay that order because that's an
10 order of this Court. That's the jurisdiction of this Court. There
11 will be a separate action to quiet title and to correct these errors.
12 But as it stands now, because of misrepresentations, this Court has
13 issued an Order in which this property is being sold to someone
14 and money is being paid into the Court.

15 THE COURT: Could you not in a quiet title action
16 raise those very same issues to a quiet title court judge to then
17 request an injunction on this probate court?

18 MR. MASON: Well, that's right, Your Honor, but
19 each day – the problem is, each day that goes by the Court has
20 issued an Order. The Court has jurisdiction to change that order.
21 And we're coming here because that order has been issued, we
22 want to advise the Court that that order that the Court was misled
23 when it issued that order and it was (indiscernible) granted, and –
24 as a matter of fact, we would like a stay of that order or at least
25 something that would grant us a remedy that would change that
order and – So we're saying this Court has jurisdiction over its
own orders, Your Honor.

THE COURT: Mr. Mason, you make sense to the
Court. What doesn't make sense are your arguments in this
probate proceeding. TR pp.11-12.

...

THE COURT: The Attorney General attempts to
have this Court delve into the administrative hearings and
decisions of the Ancestral Lands Commission to determine
whether an interest exists. In this Court's perspective, this is a
backdoor attempt to get this Court to review matters not within the
jurisdiction of this probate court no matter how vehemently
members of the Ancestral Lands Commission wanted to make this
Court the forum for those issues.

1 The Court will not take evidence, nor will it hear testimony
2 from any witness in the Government's procedural motion to
intervene. TR pp.21-22.

3

4 THE COURT: The Court denies the Attorney
5 General's request to intervene in this probate for those reasons thus
6 far stated, but more importantly, the Supreme Court of Guam has
7 recently addressed this issue in Zahnen versus Limtiaco. The
8 probate court does not have jurisdiction to determine this issue of
9 land title. And I believe it is a land title question....

10 This Court will not delve into the reasons behind, for,
11 against, misrepresentations at the Ancestral Lands Commission. It
12 is not, however, the situation that this Court believes that this story
13 is over, Counsels. And I think Mr. Mason this afternoon has
14 indicated that they may proceed in other forums. TR pp.23-24.

15 15. Based upon the Order obtained in PR0220-50 (**Exhibit 4**), the Estate was able to
16 obtain title insurance to the Lots described therein. The Estate had explained in its petition
17 (**Exhibit 3**) to the probate court that this was one of the objectives of the petition. The Estate
18 then sold Lot AL-002 to a Mr. Kil Koo Yoon for approximately \$19,000,000.00. This Court
19 granted plaintiff government a preliminary injunction on February 10, 2010 enjoining the Estate
20 from disbursing, spending, or otherwise disposing of any money paid to the Estate for the sale of
21 the lands involved in this case.

22 16. Co-Administratrix defendant Helene Torres is represented by attorney F. Randall
23 Cunliffe. Although attorney Cunliffe appeared on behalf of the Estate at the August 30, 2007
24 probate court hearing, he did not appear on its behalf before the GALC and thus cannot be
25 charged with first hand knowledge of what its oral decision was. On February 4, 2010, an
Opposition To Government's Ex Parte Application For Restraining Order was filed on behalf of
co-administratrix defendant Torres in which she, or attorney Cunliffe, asserts on pages 3-4

1 thereof that the conditional deed contains two conditions, and that the probate court “approved
2 *both matters*” (emphasis added).

3 17. In Co-Administratrix defendants O’Keefe’s and Torres’s joint March 18, 2010
4 Opposition To Plaintiff’s Request For Hearing on Motion For Summary Judgment, they assert at
5 footnote 1, on page 2 thereof, that “regardless of Helene Torres’ assertion, Mrs. O’Keefe, as Co-
6 Administratrix and in her individual capacity, has always maintained that the Deed contained one
7 conditioned bargained for exchange.”

8 18. Regardless of whether the “specific language” of the conditional deed should be
9 read to contain either one or two conditions, the GALC’s oral decision and directive at the close
10 of the September 20, 2006 hearing clearly and unambiguously enough imposed at least one
11 condition, that being that the Estate bring its Ancestral Lands claim evidence to a court that
12 would review it and make a judgment on its validity. This the Estate did not do.
13

14 **LEGAL ANALYSIS**

15 **I.**

16 Summary judgment is proper when there is no genuine issue of material fact and the
17 moving party is entitled to judgment as a matter of law. Once the moving party demonstrates
18 there is no genuine issue of material fact, then the non-moving party cannot merely rely upon
19 allegations in its pleadings. The non-moving party must then produce probative evidence tending
20 to support its factual contentions. Edwards v. Pacific Financial Corp., 2000 Guam 27.
21

22 The Estate did not have a valid Ancestral Lands claim to the Lots. For one thing, the
23 alleged taking of land from Mr. Jose Martinez Torres occurred back in 1915. Under the Act,
24 *Ancestral Lands* is defined as “those lands privately owned by residents of Guam on or after
25

1 January 1, 1930”, 21 GCA §80101(a); and *Ancestral Lands Title* is defined as “that right and
2 interest entitling an owner or owner’s descendants to the repossession of property taken by the
3 United States of America or the government of Guam on or after January 1, 1930” Absent
4 clear legislative intent to the contrary, a statute is interpreted according to its plain terms.
5 Sumitomo Constr. Co. v. Govt. of Guam, 2001 Guam 23, ¶17. Given that the Lots in question
6 are not, by definition, *Ancestral Lands*, and that the Estate could not, by definition, have an
7 *Ancestral Lands Title* to them, the proceeds from the sale of any of the Lots are statutorily
8 required be held in trust by the Commission and administered so as to provide just compensation
9 for ancestral land owners who, by virtue of continued government or public benefit use, cannot
10 regain possession to their ancestral lands. 21 GCA §80104(e).

11
12 The court-review condition orally imposed by the GALC at the close of the September
13 20, 2006 hearing is not clearly reflected in the deed. The Estate’s lawyers did not otherwise
14 bring that condition to the probate court’s attention. See, plaintiff’s **Exhibit 6**, the complete
15 transcript of the August 30, 2007 probate court hearing (no such advisement being made to the
16 probate court at that hearing). The Estate may contest whether this result -- the defective
17 condition clause of the deed and the lack of any other advisement to the probate court -- was
18 fraudulently brought about. But it is immaterial whether it happened by fraud or by mistake. It
19 happened, if only by mistake.

20 Assuming for purposes of this motion only that all of this was only an inadvertent and
21 unrecognized gross mistake or series of mistakes by the lawyers for the Estate, the Commission’s
22 executing the deed with its obscure condition clause was not a unilateral mistake by it such as
23 might preclude the remedy of reformation. The lawyers led the unrepresented Commission to
24 believe that they understood its clearly stated decision. They offered, or suggested, their services
25

1 to competently prepare language to reflect that decision in the conditional deed. The “specific”
2 language they actually prepared though was unclear enough that it was interpreted even by co-
3 adminsitatrix defendant Torres and her attorney, Mr. Cunliffe (who was not one of the lawyers
4 that appeared before the Commission), to contain two conditions, not just a “compromise” one.

5 The purpose of this motion is to obtain summary judgment that (1) as a fact matter, the
6 Commission imposed a condition upon its deeding of the land to the Estate that a court review its
7 evidence and decide whether it had a valid claim under the Act; that (2) the lawyers who
8 appeared before the Commission on behalf of the Estate are responsible for the fact that the
9 conditional deed they prepared and that the Commission executed failed to accurately reflect this
10 condition; that (3) the probate court did not decide the issue of the validity of the claim under
11 the Act; and that (4) as a matter of law, the Estate did not have a valid claim to the land under
12 the Act.

13
14 As a matter of law plaintiff government is thus entitled to the equitable remedies it seeks
15 of the imposition of a constructive trust on the proceeds of the sale of the larger Lot, AL-002,
16 and reformation of the deed as pertains to the two smaller, as yet un-sold Lots at issue, AL-002-1
17 and AL-002-2.

18
19 **II.**

20 The Estate paid one dollar’s (\$1.00) nominal consideration for the deed. Declaration of
21 Joey Leon Guerrero, submitted herewith. It is widely recognized that a statement in a deed that a
22 transfer is for value received does not alter its character as a gift if the consideration is nominal
23 or trivial as compared with the value of the property transferred. Scott v. Scott, 161 S.W.3d 307,
24

1 311-312 (Ark.App. 2004) (citing 38A C.J.S. *Gifts* §8 (1996)); Pomper v. Behnke, 97 Cal.App.
2 628, 276 P. 122, 126 (3d Dist.Ct.App. 1929).

3 When, as in this case, the aggrieved party has received no valuable consideration, the
4 requirement for reformation that the other party's knowledge or suspicion of a unilateral mistake
5 be established, may be relaxed. Tyler v. Larsen, 106 CA2d 317, 235 P.2d 39 (1951).

6 As the Court noted in its July 29, 2010 D & O, Guam's Revision of Contracts statute was
7 adopted from California Civil Code §§ 3399, 3400, 3401, and 3402; and the Court should follow
8 California precedent interpreting that statutory scheme unless there is a compelling reason to
9 deviate from that precedent. Cruz v. Cruz, 2005 Guam 3, ¶9; Fajardo v. Liberty House Guam,
10 2000 Guam 4, ¶17.

11 In Tyler v. Larsen, supra, a mother intended to deed land to herself and one of her
12 children as tenants in common. By mistake, she deeded the land in joint tenancy. No one
13 recognized the error at the time. Years later, after the mother passed away, the administrator of
14 her estate successfully brought an action to reform the deed.

15 The Tyler court construed California Civil Code section 3399, which reads, the same as
16 our 20 GCA §3230, "When, through fraud or a mutual mistake of the parties, or a mistake of one
17 party, which the other at the time knew of suspected, a written contract does not truly express the
18 intention of the parties, it may be revised, on the application of the party aggrieved, so as to
19 express that intention"

20
21 Affirming the reformation with reasoning pertinent to this case, the Tyler court
22 explained:

23
24 There was no consideration for the deed. It was voluntary, one of gift.
25 Referring to section 3399 in Enos v. Stewart, 138 Cal. 112, 115, 70 P.2d 1005,
1006, the court stated: "The party aggrieved, in the sense of the statute, means one

1 whose pecuniary interest is affected by the mistake. It would include one who
2 paid value for land which by mistake was omitted from the deed. *** But the
3 section was never intended to overthrow well-settled principles upon which equity
4 has been administered under the common law. The section certainly does not
5 contain all the law with respect to the correction of mistakes in courts of equity.
6 It is only where it clearly appears that a long-established principle is intended to
7 be overturned that the court will give such effect to a statute. In re Mill's Estate,
8 137 Cal. 298, 70 P. 91.

9 It is old and well-established law that equity, at the instance of a grantor,
10 his heirs, devisees, or representatives, will reform a voluntary conveyance, where
11 by mistake of law or fact, a larger estate or more land has been granted than was
12 intended to be conveyed; *and it is immaterial that the grantee is cognizant of the*
13 *mistake. The grantee has given nothing for the conveyance; he is deprived of*
14 *nothing; and he cannot complain if the mistake is corrected.* (Emphasis added,
15 numerous citations omitted).
16 235 P.2d 39, 41.

17 III.

18 In its filings with the Court thus far, the Estate has relied little on its nominal one dollar's
19 consideration and more on its assertion that the Commission had a "negotiating position,"
20 (September 20, 2010 Motion to Dismiss, p.3), and that it "paid the Commission for the property
21 by waiving valuable rights." (September 20, 2010 Motion to Dismiss, p.9).

22 The notion that the Commission negotiates with claimants about either ancestral or non-
23 ancestral land in its inventory defies the statutory nature and mission of the GALC. A hearing
24 before the GALC is not an arm's length, negotiated transaction between freely bargaining
25 parties. It is a statutory proceeding.

The assertion that what took place at the September 20, 2006 GALC hearing was a
contractual "waive valuable rights" consideration transaction (footnote 1, page 9 of the Estate's
September 20, 2010 Motion to Dismiss), is not supported by the transcript of the Commission's
oral decision. At most, in addition to the court-review condition the Commission affirmatively

1 lawyers offered to draft the language of the conditional deed, they assumed a duty to do so
2 correctly, the breach of which duty was at least a mistake and which amounted at least to a
3 constructive fraud in the circumstances of this case.

4 Constructive fraud consists:

5 In any breach of duty which, without an actually fraudulent intent,
6 gains an advantage to the person in fault, or anyone claiming under
7 him, by misleading another to his prejudice, or to the prejudice of
8 anyone claiming under him.

9 18 GCA § 85309.

10 One of the lawyers who presented the Estate's case to the Commission, attorney Louie
11 Yanza, submitted a declaration under penalty of perjury to the court on August 17, 2009, in
12 conjunction with the defendants' original motion to dismiss. There Mr. Yanza swore that the
13 complaint's allegations about the Estate's lawyers having offered to draft the deed were
14 "completely false." He swore that he had prepared the deed *at the request* the (emphasis added)
15 of the Commission.

16 In their February 9, 2010 motion to dismiss the First Amended Complaint, on page 2,
17 lines 20-21, the defendants acknowledged that it was the lawyers who suggested they draft the
18 deed. They admitted: "Mrs. O'Keefe's counsel suggested that they would prepare the first draft
19 of the deed."

20 That is not exactly what the lawyers suggested either though; i.e., that they would prepare
21 a *first draft* of the deed. Nevertheless, this eliminates any fact issue about whether the GALC
22 "requested," as attorney Yanza swore, that the Estate's lawyers draft the deed.

23 MR. YANZA: One last issue. So, should we prepare the language of
24 the conditional deed?
25 Transcript of the September 20, 2006 GALC hearing, p.31. (**Exhibit 2**).

1 The lawyers having suggested their scrivener's services, and the Commission having
2 acceded to this suggestion, any mistake the lawyers made in performing those services would be
3 a mutual mistake. This would be particularly so given that the lawyers acting on behalf of the
4 Estate knew the GALC did not have a lawyer of its own to review the "specific" language of the
5 conditional deed. Mutual mistake would justify both reformation of the deed as it relates to Lots
6 AL-002-1 and 2, and the imposition of a constructive trust over the proceeds from the sale of Lot
7 AL-002.

8 It is widely acknowledged that when an attorney acts for both sides and makes a mistake
9 in drafting a deed, the deed will be reformed at the instance of the party aggrieved. See, e.g.,
10 Cox v. Cox, 725 S.W.2d 880 (Ct.App. Mo. 1987) (attorney who omitted description of tract of
11 land in deed was not acting solely as agent of grantor, and mistake was thus not unilateral and so
12 was reformable); Hadley v. Clabeau, 532 N.Y.S.2d 221 (1988) (deed reformed with respect to
13 land description on grounds of mutual mistake, as same attorney represented both vendor and
14 purchaser); Crabb v. Chisum, 80 P.2d 653 (Ok. 1938) (promissory notes reformed since due to
15 mistake of draftsman, no matter how the mistake occurred, the writing does not express the
16 agreement actually made). See also, Olcott v. Southworth, 115 Vt. 421, 63 A.2d 189; Hoffman
17 v. Chapman, 182 Md. 208, 34 A.2d 438; Kobylinski v. Szeliga, 307 Mich. 306, 11 N.W.2d 899;
18 Schroath v. Pioneer Bldg. Assn. of Newport, 274 Ky. 685, 119 S.W. 2d 1113; Steger v.
19 Seabaugh, 346 Mo. 728, 142 S.W.2d 1001.

21 In Bank of America v. Granger, 115 CA 210, 1 P.2d 479 (1931), the California statutory
22 scheme from which Guam's **Revision of Contracts** statutory scheme was adopted was construed
23 and it was held that mistake can form the basis for a reformation action even though the parties
24 were in accord concerning the language to be used in the instrument. The Granger court noted
25

1 that for purposes of revising a contract, it must be presumed that all parties intended to make an
2 equitable and conscientious agreement. The Granger court observed that it was not confined to
3 inquiring what language the parties intended to put in the instrument. It is proper to inquire what
4 the instrument was intended to mean and what its legal consequences were intended to be.

5 In Stare v. Tate, 21 CA3d 432, 98 CR 264 (1971) a settlement agreement was reformed
6 where one attorney knew the attorney for the other side had not realized the agreement
7 miscalculated the money to be divided. The court noted that the only fraud necessary for a
8 reformation is such as may be inferred from the failure of the defendant to correct the mistake of
9 the plaintiff known to or suspected by the defendant at the time of execution of the instrument;
10 and that the plaintiff's negligence in not reading the instrument before signing it is not a bar to
11 reformation. See also, Martinelli v. Gabriel, 103 Cal.App.2d 818, 230 P.2d 444 (Dist. Ct. App.,
12 1st Dist. 1951) (fact that party seeking reformation of deed has read the instrument and knows its
13 contents does not prevent a court from finding that it was executed under a mistake); Baines v.
14 Zuieback, 84 CA2d 483, 191 P2d 67 (1948) (negligence in not reading an instrument is not
15 necessarily a bar to reformation; party seeking reformation relied upon attorney who drafted the
16 instrument).

17
18
19 **V.**

20 *Deceit* is defined at 18 G.C.A. §90103(1) as the suggestion, as a fact, of that which is not
21 true, by one who does not believe it to be true; and at §90103(3) as the suppression of a fact, by
22 one who is bound to disclose it, or who gives information of other facts which are likely to
23 mislead for want of communication of that fact. 18 G.C.A. §90104, *Public Deceit*, provides that
24 one who practices a deceit with intent to defraud the public, or a particular class of person, is
25

1 deemed to have intended to defraud every individual in that class, who is actually misled by the
2 deceit.

3 The Estate's licensed lawyers would know that a probate court would not review the
4 evidence the Estate had presented and make a decision whether "to approve the Jose Martinez
5 Torres Estate's receipt of the Property" (August 31, 2007 probate court Order, **Exhibit 4**, p.2) as
6 consistent with the Ancestral Lands Act. We have the transcript of the September 20, 2006
7 hearing. Faced with the Estate's three zealous, cajoling, and perhaps mistaken lawyers, the
8 Commission prudently decided it just was not comfortable deciding the case and that a court
9 should review it. The lawyers did not relent and they inserted "probate" into what they later
10 characterized to the probate court (June 19, 2007 Petition, **Exhibit 3**, p.3) as the "specific
11 language" language of the Commission's decision.
12

13 On the face of it, the Estate's lawyers' suggestion to the Commission that *probate* court
14 was the appropriate place for them to carry out the Commission's directive was actively
15 deceitful:

16 MR. CHARFAUROS: And also that this be a conditional deed that
17 you still have to go to the courts and go through the regular court proceedings
18 to -- and correct me if I'm wrong, is that going to the court proceedings to
19 review this claim and the court will make the final judgment on the claim.

19 MR. YANZA: That is correct Mr. Chairman. On behalf of the estate,
20 neither I myself, Mr. Mantanona and Mr. Razzano or Mrs. O'Keefe can
21 declare that we hereby terminate all future claims to ancestral lands. But, as
22 we saw fit best for the estate, we are willing to go before the probate court and
23 the probate estate of Mr. Torres and request the court that they, the Court,
24 approves the receipt of these ancestral lands and approve the final termination
25 of future claims within the inventory of the commission.

23 MR. CHARFAUROS: And understand this, this is a conditional deed
24 and if the Court comes back that says, that you have absolutely no claim to
25 this property, this property comes right back into the inventory of the
Ancestral Lands Commission and that we are not going to rehear this case

1 again. Unless you guys have convincing evidence that has not been reviewed
2 by the Court to rehear the case. Do you understand exactly what this motion
is?

3 MR. YANZA: Yes.

4 MR. MANTANONA: Yes, we do.

5 Transcript of September 20, 2006 GALC hearing, **Exhibit 1**, pp. 26-27.

6 But even if the misrepresentation that probate court was the right place to go for the
7 Estate to satisfy the court-review condition could not possibly have been intentional, as the
8 Estate argues in its September 20, 2010 Motion to Dismiss, that misrepresentation should still
9 suffice for the court granting the equitable remedies sought by the government in this case. Even
10 if specifically interpolating the word “probate” into the Commission’s oral decision and
11 obscuring and changing its character was a mistake, and even if the Estate’s lawyers’ not
12 otherwise verbally advising the probate court that the Commission wanted a court to decide the
13 validity of the Estate’s claim was a mistake, these mistakes by these lawyers, given that they
14 volunteered their services to the unrepresented Commission, amounted to mutual mistake and
15 suffice for the Court granting the government the equitable remedies it seeks of reformation of
16 the deed and imposition of a constructive trust.

17
18 **VI.**

19
20 In the Estate’s March 18, 2010 Affidavit In Support of Guam Rule of Civil Procedure
21 56(f) Motion, ¶3, one of the Estate’s attorneys swears and deposes that “It is the Estate’s position
22 that the Ancestral Lands Commission was **clear** and **unambiguous**” (Emphasis supplied).

23 The Estate’s attorney so swears and deposes presumably with reference to the “specific
24 language” of the deed the Estate’s attorneys drafted, and not with reference to the words used by
25

1 the Commission at the close of the September 20, 2006 hearing. The Estate has urged upon this
2 Court the Guam Supreme Court's holding in Wasson v. Berg, 2007 Guam 16, that Guam follows
3 the traditional, plain meaning, approach to matters of contract interpretation. An administrative
4 agency oral decision is not a contract, nor is it a statute; but the guiding principle of Wasson v.
5 Berg nevertheless probably should apply to its interpretation. The Court need not look beyond
6 the words the Commission used when it rendered its oral decision in order to interpret it. The
7 Commission clearly and affirmatively enough imposed at least one condition, that being that the
8 Estate take its evidence to a court for review and a decision about whether it had a valid claim to
9 the land under the Act. The deed drafted by the Estate's lawyers failed to clearly include that
10 condition.

11 12 13 14 15 16 **Conclusion**

17 There are no genuine issues of material fact. The deed's "specific language" failed to
18 clearly include the court-review condition and the Estate's lawyers failed to otherwise inform the
19 probate court of it; even if all of this must have happened by mistake. This caused the wrongful
20 acquisition by the Estate of money that it is not entitled to. The Commission is, so that it may
21 fulfill its statutory mandate to provide compensation to persons who have valid Ancestral Lands
22 claims but whose lands have not been returned to them due to continued government or public
23 benefit use. The government is entitled to a summary judgment that the prayed-for constructive
24 trust be imposed and that the deed be reformed with respect to the two smaller, as yet unsold
25

1 Lots, AL-002-1 and 2. Finally, summary judgment should be entered declaring that the Estate
2 does not have a valid claim to the Lots under the Act, and that title to the two remaining, unsold
3 Lots, AL-002-1 and 2 is quieted in the government, in the Ancestral Lands Commission.
4

5 Respectfully submitted this day of December, 2010.

6 OFFICE OF THE ATTORNEY GENERAL
7 John M. Weisenberger, Attorney General

8 By: _____

9 WILLIAM C. BISCHOFF
10 Assistant Attorney General
11 Attorneys for Government of Guam
12

13 **MOTION FOR LEAVE TO EXCEED PAGE LIMITS**

14 Pursuant to Local Rules of the Superior Court of Guam CVR 7.1(g), plaintiff government
15 moves the court for leave to exceed the 20 page limit for briefs. The factual presentation, in
16 particular, necessitated the page limit being exceeded.
17

18 OFFICE OF THE ATTORNEY GENERAL
19 John M. Weisenberger, Attorney General

20 By: _____

21 WILLIAM C. BISCHOFF
22 Assistant Attorney General
23 Attorneys for Government of Guam
24
25