



**General Averments**

1. The Court has jurisdiction over this matter pursuant to 7 GCA §3105.
2. Plaintiff is the Government of Guam.
3. The Guam Ancestral Lands Commission (“the Commission”) is a non-autonomous instrumentality within the Government of Guam.
4. Defendants Helene Torres and Evelyn O’Keefe are the Co-Administratrixes of the Estate of Jose Martinez Torres. Co-Administratrixes Helene Torres and Evelyn O’Keefe, and the Estate of Jose Martinez Torres, are collectively referred to herein as simply “the Estate.”
5. At all times relevant hereto, the attorneys for the Estate acted as agents for the Estate, and all relevant acts or omissions of theirs, as alleged herein, are attributable to the Estate.

**First Cause of Action, For Reformation of Deed**

6. On or about the months of August and September of 2006, Evelyn O’Keefe, in her capacity as an heir of Jose Martinez Torres, deceased, along with her attorneys, appeared at hearings before the Guam Ancestral Lands Commission and presented evidence in support of the Estate’s claim under the Guam Ancestral Lands Act, 21 GCA §80101 et seq., to certain parcels of property in the Commission’s inventory, namely Lots AL-002, AL-002-1, and AL-002-2 (“the Lots”).
7. The Estate’s Ancestral Lands Claim evidence had mainly to do with what it maintained were injustices that took place in the years 1914 – 1915, which would be several years earlier than the Commission’s apparent jurisdictional cut-off date of January 1, 1930.

1           8.       At the conclusion of the hearings, on September 20, 2006, the Commission  
2 was uncertain whether the Estate had presented evidence that would entitle it to the Lots at  
3 issue under the provisions of the Ancestral Lands Act. By an oral decision, the Commission  
4 awarded the Lots to the Estate of Jose Martinez Torres but imposed a condition upon the  
5 award: That the Estate bring its Ancestral Lands Claim evidence before a court, to have a  
6 court review the evidence and make a final decision on it.

7           9.       The Commission is a public body and by controlling statutes it makes  
8 decisions only collectively, deliberatively, and at properly held public hearings. The  
9 Commission never changed the decision made at the September 20, 2006 hearing.

10          10.       At the September 20, 2006 hearing the Commission orally decided and  
11 instructed the Estate as follows:

12                   “Okay. All right. Madam Chair? If there’s no other questions by  
13 the other commission member, I’d like to make a motion and my  
14 motion would be basically in line with the request of the family to  
15 recognize the claim to the estate of the lots mentioned herein on the  
16 record, which would also extinguish all claims to the Duarte Estate.  
17 And also that this be a conditional deed that you still have to go to  
18 the courts and go through the regular court proceedings to – and  
19 correct me if I’m wrong, is that going to the court proceedings to  
20 review this claim and that the court will make the final judgment on  
21 the claim.”

22                   and

23                   “And understand this, this is a conditional deed and if the Court  
24 comes back and that says, that you have absolutely no claim to this  
25 property, this property comes right back into the inventory of the  
Ancestral Lands Commission and that we are not going to rehear this  
case again. Unless you guys have convincing evidence that has not  
been reviewed by the Court to rehear the case. Do you understand  
exactly what this motion is?”

and

1           “And this motion is to extinguish this claim and basically, it’s up to  
2           the Courts and if the Court sees fit that this motion is inappropriate  
3           then the Courts can rule against that and if the Court sees fit that this  
4           claim is invalid, this property would come back to the inventory of  
5           the Ancestral Lands Commission. But basically the Court is going  
6           to be the final say so. Do you understand that motion?”

7           11.     Upon the Commission’s rendering its oral decision, the attorneys for the  
8           Estate offered to draft the language of a conditional deed to reflect the Commission’s oral  
9           decision.

10          12.     The Commission, which is composed entirely of non-lawyer laymen, agreed  
11          to permitting the Estate’s lawyers draft the conditional deed.

12          13.     Having so offered to draft the conditional deed, the Estate was required to act  
13          in the utmost good faith towards the Commission and draft a conditional deed that  
14          accurately and faithfully reflected the Commission’s oral decision. The Commission  
15          justifiably relied upon the Estate’s lawyers, as officers of the court, to draft a deed that  
16          would accurately and faithfully reflect the decision it orally rendered.

17          14.     The Commission did not have a lawyer of its own review the deed that was  
18          drafted by the Estate’s lawyers. The Estate’s lawyers knew or should have known this.

19          15.     Under the circumstances, the Estate’s lawyers exercised a controlling  
20          influence over the Commission with respect to the specific language that was placed in the  
21          deed.

22          16.     Unbeknownst to the Commission, the deed drafted by the Estate’s lawyers, a  
23          true and correct copy of which is attached hereto and incorporated herein as Exhibit 1, did  
24          not accurately reflect its oral decision, in that the language of the deed did not include the  
25          condition that the Estate bring its Ancestral Lands Claim evidence before a court, to have a

1 court review the evidence and make a final decision on it. Instead, the condition paragraph,  
2 drafted by the Estate's lawyers, merely required that the Estate petition a *probate* court to  
3 approve the Estate's receipt of the property. The Estate's lawyers steered the matter to a  
4 *probate* court, which would not have jurisdiction to entertain the question whether the  
5 Estate's evidence entitled it to the Lots in question under the provisions of the Ancestral  
6 Lands Act.

7 17. The Estate's lawyers drafted the condition paragraph to read as follows:

8 "This Quitclaim Deed and the effective transfer of the Property is  
9 conditioned upon the administrator/trix petitioning the probate court  
10 to approve the Jose Martinez Torres Estate's receipt of the Property  
11 and to approve the Jose Martinez Torres Estate's permanent  
12 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."

13 18. The Estate's lawyers assured the Commission they understood the oral  
14 decision; it was plainly enough stated that the lawyers did, and the Commissioners  
15 reasonably believed that the lawyers did, it being plain also that the Estate's claim, that of an  
16 alleged injustice so far back as to the years 1914-1915, was of questionable validity under  
17 the Act. At the same time, however, as the Estate's lawyers assured the Commission they  
18 understood the decision, they also conveyed to the Commission the false impression that a  
19 manner by which they could abide by it would be for them to go before the probate court  
20 and request approval of the Estate's receipt of the lands in question. The Estate's lawyers  
21 knew that particularly by interpolating "probate" court into the Commission's decision they  
22 were obscuring and changing it, since a court sitting in probate exercises limited jurisdiction  
23 and would not at all make the kind of decision the Commission wanted a court to make; and  
24

1 they knew that the Commission, composed of non-lawyers, was unaware of this. The  
2 Estate's lawyers should have disclosed to the Commission this fact of a probate court's  
3 limited jurisdiction, but they instead knowingly suppressed it. They offered to prepare the  
4 language of the conditional deed, and drafted it to read in this same muddled fashion. The  
5 Commission justifiably relied upon the Estate's lawyers and never questioned the wording  
6 of the condition paragraph, the Estate's lawyers having assured the Commission that they  
7 understood the decision and having implied they knew of an appropriate court to go to in  
8 order to carry it out, the Commission trusting the lawyers as officers of the court who owed  
9 a duty of candor to the Commission, inasmuch as it was a tribunal, and the lawyers having  
10 offered to draft the condition paragraph and having thereby assumed a duty to do so in good  
11 faith and so as accurately to reflect the Commission's actual decision. The Estate's ensuing  
12 petition to the probate court, a true and correct copy of which is attached hereto and  
13 incorporated herein as Exhibit 2, directed that court's attention to the condition paragraph's  
14 "specific" language, as if the Commission had drafted it, and intimated it was the  
15 Commission that had suggested "probate" court. The Estate's lawyers went to a probate  
16 court and without advising the probate court that the Commission wanted a court to review  
17 the evidence and decide whether the Estate was entitled to the Lots in question under the  
18 provisions of the Ancestral Lands Act, they obtained an Order in Guam Superior Court  
19 Probate Case No. PR0220-50 on August 31, 2007, which Order was likewise drafted by the  
20 Estate's lawyers, that recited in relevant part as follows: "IT IS FURTHER ORDERED that  
21 the following parcels of property [the Lots in question] have been properly received by the  
22 Estate through the Ancestral Lands Commission."  
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1           19.     The Estate’s lawyers advised the Commission of this probate court Order, a  
2 true and correct copy of which is attached hereto and incorporated herein as Exhibit 3, and  
3 the Commission assumed that the actual condition it had orally imposed upon the Estate’s  
4 being awarded the Lots had been satisfied; and so in September of 2007 the Commission  
5 executed a SATISFACTION AND RELEASE OF CONDITION PLACED ON DEED,  
6 which was also drafted by the Estate’s lawyers, which was recorded at the Department of  
7 Land Management, Government of Guam, on September 26, 2007, under Instrument  
8 Number 762017.

9           20.     Unlike with a typical deed, where it is the intent of two parties to it  
10 negotiating at arms-length that matters in a reformation action, in this case it was only the  
11 intent of the Commission, an adjudicative body, that mattered with respect to the language  
12 that should have been contained in the conditional deed.

13           21.     The deed fails to express the true intent of the Guam Ancestral Lands  
14 Commission in conditionally awarding the Lots to the Estate, because it does not contain the  
15 condition that before it becomes effective, the Estate must bring its Ancestral Lands Claim  
16 evidence before a court, to have a court review the evidence and make a final decision on it.  
17 The Estate knew, or should have known, that by leaving out, or obscuring, this condition,  
18 especially by adding “probate” to it, the deed failed to express the true intent of the  
19 Commission; and the Estate knowingly failed to call this to the Commission’s attention, and  
20 to the probate court’s attention; all of which resulted in injury to the Commission inasmuch  
21 as it was attempting to perform its duty of awarding land only to statutorily qualified  
22 Ancestral Lands Act claimants but was frustrated in its attempted performance of that duty.  
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1 The deed must be reformed to accurately reflect the actual condition orally imposed by the  
2 Commission at the September 20, 2006 hearing.

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5 **Second Cause of Action**

6 **Request For Declaratory Judgment; And For Title to be Quieted and for Imposition of**  
7 **a Constructive Trust**

8 22. Upon information and belief, the Estate has sold Lot AL-002 to one Mr. Kil  
9 Koo Yoon, for approximately \$19,000,000.00; and Mr. Yoon is making installment  
10 payments of \$1,500,000.00 to the Estate every six months. Upon information and belief,  
11 Mr. Yoon, at the time he purchased the Lots from the estate, did not have reason to know  
12 that the Commission had actually intended a conditional deed to the Estate and wanted a  
13 court to review the evidence and decide whether the Estate was entitled to the Lots in  
14 question under the provisions of the Ancestral Lands Act. Upon information and belief, Mr.  
15 Yoon is thus a bona fide, good faith purchaser of Lot AL-002 from the Estate.

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17 23. Plaintiff incorporates herein by this reference all of the preceding paragraphs  
18 of this Third Amended Complaint and requests, pursuant to 7 G.C.A. §26801, that the court  
19 reforms the deed as prayed for in this Third Amended Complaint and that regardless of  
20 whether the court actually reforms the deed, the court proceeds to review the evidence  
21 presented by the Estate to the Ancestral Lands Commission, and declare the rights of the  
22 parties with respect to the Lots in question, particularly declaring whether the Estate of Jose  
23 Martinez Torres is entitled to the Lots in question under the provisions of the Guam  
24 Ancestral Lands Act, 21 GCA §80101 et seq.; and if the Estate is not so entitled, then that  
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1 the Court impose a constructive trust in favor of the Commission upon all payments, past  
2 and future, made by Mr. Yoon to the Estate for Lot AL-002; and that pursuant to 21 G.C.A.  
3 §25101 et seq., the court quiet title in the Ancestral Lands Commission to Lots AL-002-1  
4 and AL-002-2 which, upon information and belief, have not been sold to anyone by the  
5 Estate but which the Estate claims an ownership interest in pursuant to the deed sought to  
6 be reformed by plaintiff herein.

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9       **WHEREFORE**, plaintiff prays that the deed, and any related instruments that may  
10 also need to be reformed, be reformed to embody the true intent of the grantor Guam  
11 Ancestral Lands Commission by adding to it a condition to its effectiveness, that being the  
12 condition that the Estate must bring its Ancestral Lands claim evidence to a court, for a  
13 court to review it and make a final decision upon it; and that whether the court reforms the  
14 deed or not, if the court finds the condition paragraph of the deed failed to express the true  
15 intent of the Commission, due to a wrongful act on the part of the defendants, then the court  
16 proceed to review the evidence presented by the Estate to the Ancestral Lands Commission  
17 and declare the rights of the parties with respect to the Lots in question, particularly  
18 declaring whether the Estate is entitled to the Lots in question under the provisions of the  
19 Guam Ancestral Lands Act, 21 GCA §80101 et seq.; and that if the Court determines the  
20 Estate is not entitled to the Lots under the provisions of the Guam Ancestral Lands Act,  
21 then that the Court impose a constructive trust in favor of the Commission upon all  
22 payments, past and future, made by Mr. Yoon to the Estate for Lot AL-002; and that  
23 pursuant to 21 G.C.A. §25101 et seq., the court quiet title in the Ancestral Lands  
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1 Commission to Lots AL-002-1 and AL-002-2 which, upon information and belief, have not  
2 been sold to anyone by the Estate but which the Estate claims an ownership interest in  
3 pursuant to the deed sought to be reformed by plaintiff herein; and for such other and  
4 further relief as the Court deems just and proper.

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6 Dated this \_\_\_\_\_, 2010.

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

9 \_\_\_\_\_  
10 WILLIAM C. BISCHOFF  
11 Assistant Attorney General  
12 Attorneys for the Government of Guam  
13 Attorneys for the Guam Ancestral Lands Commission  
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