

CRUZ v. JOHNSTON

MANUEL T. CRUZ, et al., Plaintiffs

v.

**EDWARD E. JOHNSTON, individually and in his capacity as High
Commissioner of the Trust Territory of the Pacific Islands,
Defendant**

Civil Action No. 46-73

Trial Division of the High Court

Mariana Islands District

March 1, 1974

**Motion for orders in aid of judgment. The Trial Division of the High Court,
Burnett, Chief Justice, issued orders in aid of the judgment.**

Homesteads—Homestead Deed from Government

**Government, which lost class action for conveyance of homesteader deeds
and proceeded to issue deeds giving a lesser interest than previously
issued deeds and referring to probable survey deficiencies, would be
required to issue deeds similar to those previously issued.**

Counsel for Plaintiffs: SAMUEL WITHERS, III, DONALD JUNEAU
and DANIEL AQUINO,
Micronesia Legal Services Cor-
poration

Counsel for Defendant: LYLE RICHMOND
EMMET RICE
MAMORU NAKAMURA

BURNETT, *Chief Justice*

Order and Judgment, entered October 2, 1973, required defendant to execute deeds of conveyance to plaintiffs and the class that they represent. Thereafter, the parties being in substantial disagreement over the proper manner of carrying out that Order and Judgment, plaintiffs moved for further Orders to effectuate the same.

Plaintiffs' primary objection is to the form of the deed which defendant proposed to issue pursuant to the Court's Order. That form differs from previously issued homestead deeds in certain important respects which I find to be controlling.

First of all, the reservation of easements, rights of way and other uses authorized by law, is more extensive than in previously executed deeds, or than authorized by law. In addition, the proposed deed form does not contain the previously standard provision with respect to claims for damages arising out of the exercise by the government of the reservation.

While I do not question the good faith assurances of counsel that the government did not intend, by the changed language of the deed, to convey any lesser interest than to previous homesteaders, the defect is not cured by those assurances.

Plaintiff complains further as to the various recitals contained in the proposed deed form which set out probable survey deficiencies, plaintiffs' desire to withhold issuance until all could be cured, and the fact that the Court's judg-

ment in this action did not permit orderly survey and title determination. At best, such recitals, as counsel for defendant concedes, are superfluous; at worst, as contended by plaintiffs, they carry the danger of subjecting the title conveyed to further burden. Consequently, I see no valid reason for them to remain.

Further, objection is made to defendant's efforts to explain his position in this matter, and to make clear, to all in the plaintiff class, the hazards of accepting a deed based upon a survey known to be inaccurate. I fail to see any impropriety in his doing so. As I said in my opinion entered October 19, 1973, "I recognize that it may well be, . . . that this conveyance of the government's interest in these homestead lands in advance of final survey would not be in the best interest of the homesteader." To bar defendant from making this view, and his, known, would constitute an unwarranted interference with the exercise of his Executive responsibilities.

For the same reason, I decline the request that delivery of deeds be made a responsibility of plaintiffs' counsel, rather than the government. No valid reason appears for interfering with the normal administrative process.

Accordingly, the Court specifically finds:—

(1) There is no lawful reason why the homestead deed forms prepared for execution and delivery to members of the plaintiff class should differ in any material respect from those previously issued to persons eligible therefor not members of the plaintiff class.

(2) Notice of availability, and delivery of, such deeds can be carried out through normal governmental channels, now therefore:—

It is ordered, adjudged and decreed, that this Court's Order and Judgment of October 2, 1973, is hereby supplemented as follows:

(1) Defendant shall execute, within twenty (20) working days from the date of this Order, deeds of conveyance to each member of the plaintiff class.

(2) Said deeds of conveyance shall be in the form shown in Attachment "A" to this Supplemental Order and Judgment and shall be accompanied by a translation in the Chamorro language.

(3) Notice of the time that said deeds are available for delivery shall be disseminated not less than three (3) days prior to the date set by paragraph (1) herein.

ATTACHMENT A

TRUST TERRITORY OF THE PACIFIC ISLANDS

Office of the High Commissioner

Saipan, Mariana Islands

No.

QUITCLAIM DEED

(Agricultural Tract Homestead)

BY VIRTUE OF the authority conferred upon me by Section 208 of Title 67 of the Code of the Trust Territory of the Pacific Islands as amended to date, I, the High Commissioner of the Trust Territory of the Pacific Islands, authorized by law and acting for and on behalf of the Trust Territory of the Pacific Islands, hereinafter referred to as the Government, do hereby remise, release and quitclaim forever to of hereinafter called by Grantee, and to his heirs and assigns forever, all right, title, interest, and claim of the Government in or to the following real property, hereinafter called the "Premises", situated on the Island of, Mariana Islands District, Trust Territory of the Pacific Islands, and as described in the Certificate of Compliance issued by the District Administrator, Mariana Islands District, pursuant to Section 208 of Title 67 of the Trust Territory

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Code, a copy of which is attached hereto and incorporated by reference herein as Exhibit A; but RESERVING AND EXCEPTING therefrom to the Government, as provided by Section 208 of Title 67 of the Trust Territory Code and said Permit to Homestead, all mineral rights whatsoever, such water rights as may be required, all public roadways, easements and rights of way of any kind or nature now existing, and necessary rights of way for construction of utility lines, pipelines, or other conduits with necessary maintenance and access roads as may be constructed by the authority of the Government or its assigns; but this reservation shall not be construed to waive any claim for injury to growing crops, improvements, surface damage, or other injuries sustained by the Grantee as a direct result of the execution of the work or exercise of the right of entry upon the above-described property under this reservation.

This Quitclaim Deed of Conveyance has been translated into the Chamorro language and has been executed in both the present form and translated form. In the event of any conflict between the English and Chamorro language versions, the English language version shall govern.

IN WITNESS WHEREOF, the High Commissioner has hereunto set his hand as of the day and year first written above.

GOVERNMENT OF THE TRUST TERRITORY
OF THE PACIFIC ISLANDS
ATTACHMENT "A"

By:

Edward E. Johnston
High Commissioner

RELEASE BY ALIEN PROPERTY CUSTODIAN

PRIOR to the execution of this Deed by the High Commissioner, I, the Alien Property Custodian for the Trust Territory, pursuant to Section 2 of Title 26 of the Code of the Trust Territory, have given and granted and by these presents do hereby give and grant to the Government of the Trust Territory, its successors and assigns forever, all right, title and interest vested in me as Alien Property Custodian in and to the real property hereinabove described.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of October, 1973.

ALIEN PROPERTY CUSTODIAN

By:

Richard I. Miyamoto

CERTIFICATION AS TO TRANSLATION

I,

(Type Full Name)

.....

(Type Full Title)

for the Mariana Islands District, Trust Territory Government, hereby certify that the above Quitclaim Deed of Conveyance was delivered in my presence on the day of, 19....., to the above named Homesteader; that to the best of my knowledge the Chamorro language version of said Deed is a correct and accurate translation of the provisions of said Deed from the English language into the Chamorro language; that I am familiar, conversant and have a working knowledge of both languages; that before said delivery, I read the Chamorro language version of said Deed to said Homesteader and answered all questions regarding the English meanings of the provisions of said Deed asked by and to the complete satisfaction of said Homesteader, and that said Homesteader indicated to me that he/she understood fully the contents of said Deed.

IN WITNESS WHEREOF, I hereunto set my hand this day of, 19.....

.....

(Signature)

RECORDING

Recorded this day of, 19....., in Book No., Page No.

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Clerk of Courts
Mariana Islands District