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1 FOR PUBLICATION

2
3 IN THE SUPERIOR COURT
4 OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

5 SHINJI FUJIE and TOSHIN GROUP
INTERNATIONAL, INC.,

6 Plaintiffs,

7 v.

8 JOAQUIN Q. ATALIG and RAMON
9 QUICHOCHO,

10 Defendants.

Civil Action No. 10-0131-CV

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS

11
12 **A. Standard**

13 A motion to dismiss pursuant to NMI R. Civ. P. 12(b)(6) is a challenge to the sufficiency of the
14 pleadings set forth in the complaint. A NMI R. Civ. P. 12(b)(6) dismissal is proper where there is either a
15 "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal
16 theory." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). In considering a motion
17 to dismiss for failure to state a claim, the court generally accepts as true the allegations of the complaint
18 in question, construes the pleading in the light most favorable to the party opposing the motion, and
19 resolves all doubts in the pleader's favor. *Lazy Y. Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir.
2008); *Jenkins v. McKeithen*, 395 U.S. 411, *reh'g denied*, 396 U.S. 869 (1969).

20 To survive a motion to dismiss, the plaintiff must allege "enough facts to state a claim to relief
21 that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has facial
22 plausibility, "when the plaintiff pleads factual content that allows the court to draw the reasonable
23 inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, U.S. , 129 S.Ct.
24 1937, 1949 (2009). "[F]or a complaint to survive a motion to dismiss, the non-conclusory 'factual
25 content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the
plaintiff to relief." *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

A court is "free to ignore legal conclusions, unsupported conclusions, unwarranted inferences and
sweeping legal conclusions cast in the form of factual allegations." *Farm Credit Services v. American*

1 *State Bank*, 339 F.3d 765, 767 (8th Cir. 2003) (citation omitted). “While a complaint attacked by a Rule
2 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide
3 the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic
4 recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. 544, 555 (internal
5 citations omitted). Moreover, a court “will dismiss any claim that, even when construed in the light most
6 favorable to plaintiff, fails to plead sufficiently all required elements of a cause of action.” *Student Loan*
7 *Marketing Ass’n v. Hanes*, 181 F.R.D. 629, 634 (S.D. Cal. 1998). In practice, “a complaint . . . must
8 contain either direct or inferential allegations respecting all the material elements necessary to sustain
9 recovery under some viable legal theory.” *Twombly*, 550 U.S. at 562. If a plaintiff fails to state a claim, a
10 court need not permit an attempt to amend a complaint if “it determines that the pleading could not
11 possibly be cured by allegation of other facts.” *Cook, Perkiss and Liehe, Inc. v. N. Cal. Collection Serv.*
12 *Inc.*, 911 F.2d 242, 247 (9th Cir. 1990).

13 **B. Discussion**

14 15 1. Slander of Title

16 Defendants move to dismiss the first cause of action for slander of title. They argue that the cause
17 of action fails because the Plaintiffs do not allege that the “contents of the Termination of Ground Lease
18 is false and defamatory.” Defendants argue that the allegations are conclusory and not supported by facts
19 alleged in the Complaint.

20 “The term ‘slander of title’ is defined as a false and malicious statement, oral or written, made in
21 disparagement of a person’s title to real or personal property, causing him injury.” *50 Am. Jur. 2d Libel*
22 *& Slander* § 548 (1995). The second Restatement of Torts provides the general guidelines which courts
23 generally follow in identifying the elements of slander of title. Restatement (Second) of Torts § 623A
(1977) provides:

24 One who publishes a false statement harmful to the interests of another is
25 subject to liability for pecuniary loss resulting to the other if
(a) he intends for publication of the statement to result in harm to interests of
the other having a pecuniary value, or either recognizes or should recognize
that it is likely to do so, and

1 (b) he knows that the statement is false or acts in reckless disregard to its
2 truth or falsity

3 Additionally, Restatement (Second) of Torts § 624 (1977) annunciates:

4 The rules on liability for the publication of an injurious falsehood stated in §
5 623A apply to the publication of a false statement disparaging another's
6 property rights in land, chattels or intangible things, that the publisher should
7 recognize as likely to result in pecuniary harm to the other through the
8 conduct of third persons in respect to the other's interests in the property.

9 With regards to the elements of proof, slander of title requires (1) the plaintiff has a legally
10 protected interest in the property, (2) a false statement of fact, (3) published with malice, (4) to a third
11 party that disparages plaintiff's property interest, and (5) causes actual economic loss or special damages.
12 See *Macia v. Microsoft Corp.*, 152 F. Supp. 2d 535, 541 (D. Vt. 2001); *Stewart Title Guar. Co. v.*
13 *Greenlands Realty L.L.C.*, 58 F. Supp. 2d 370, 388 (D.N.J. 1999); *Chi. Title & Trust Co. v. Levine*, 789
14 N.E.2d 769, 773 (3d Dist. 2002).

15 It is undisputed that the parties entered into a lease agreement, under which the property at issue,
16 was leased to Plaintiffs for a period of fifty five years. The Complaint alleges that in consideration for the
17 lease, the Plaintiffs paid \$363,300 as prepayment for the entire term of the lease. ¶ 8. Accordingly, the
18 Plaintiffs have alleged sufficient facts to satisfy the first element.

19 The Complaint also alleges that three years after the execution of the lease the Defendants filed a
20 Termination of Ground Lease with the Commonwealth Recorder. ¶ 11. This act caused the statement to
21 become "published," satisfying a portion of the third element and the fourth element. There is a factual
22 dispute as to: (1) whether actual notice was given to the Plaintiffs of the termination, and (2) whether
23 there were lawful grounds to terminate the lease. Determinations of these facts are necessary to satisfy
24 the second element.

25 "Malice is defined as the intentional commission of a wrongful act without just cause or excuse."
26 *Lone v. Brown*, 489 A.2d 1192, 1195 (1985). An individual is said to have maliciously made a false
27 statement when either it is done with the deliberate intent to harm another or it is made with a reckless
28 disregard of its consequences, the latter being measured by the conduct of a reasonable person. 9 Stuart
29 M. Speiser et al., *The American Law of Torts* 33:7, at 1024 (1992). Plaintiffs allege that Defendants filed

1 the Termination of Ground Lease with the intent to lease out property that was already validly leased to
2 the Plaintiffs. ¶ 34. This allegation satisfies the “malice” portion of the third element.

3 The fifth element that a plaintiff must prove to establish a claim of slander of title is special
4 damages. Attorneys’ fees incurred in removing an unwarranted cloud on title can qualify as special
5 damages. *See TXO Prod. Corp. v. Alliance Resources Corp.*, 419 S.E.2d 870, 881 (W. Va. 1992), *aff’d*,
6 509 U.S. 443 (1993) (citing cases that support the majority rule that attorney’s fees constitute special
7 damages in slander of title cases). Plaintiffs allege that expense incurred as a result of hiring an attorney
8 to clear title to their leasehold. ¶ 25. Therefore, the fifth and final element to slander of title has been
9 properly alleged in the Complaint.

10 For these reasons, the Court rejects the Defendants’ argument that the Plaintiffs’ claim for slander
11 of title fails to state a claim upon which relief can be granted and thus denies the Defendants’ motion to
12 dismiss.

13 2. Breach of Lease Agreement

14 Defendants move to dismiss the second cause of action, breach of lease agreement. They argue
15 that the Plaintiffs have not performed their own obligations under the Ground Lease and otherwise fail to
16 satisfy the elements of breach of contract.

17 To state a claim for a breach of contract the plaintiff must plead: (1) the existence of a contract,
18 (2) performance of its conditions by plaintiff, (3) breach by the defendant, and (4) damages as a result of
19 the breach. *Alcalde v. NAC Real Estate Invs. & Assignments, Inc.*, 316 Fed. Appx. 661, 662 (9th Cir.
20 2009); *see also Always at Market Inc., v. Girardi*, 365 Fed. Appx. 603, 607 (5th Cir. 2010).

21 It is undisputed that a lease agreement existed between the parties. It is also not in dispute that
22 Plaintiffs paid the entire amount due for the fifty five year lease. Plaintiffs allege that this prepayment
23 constitutes satisfaction of their obligations under the Ground Lease. The Complaint alleges that the
24 Defendants’ breached the Ground Lease by filing the Termination of Ground Lease. ¶¶ 19, 21. Plaintiffs
25 argue that this action breached the condition that the Lessee “lawfully and quietly hold, occupy and enjoy
the Premises during the term of [the] Lease without hindrance or molestation by Lessor or any other
person claiming by, through or under Lessor....” ¶¶ 33-34. The Complaint alleges damages of attorneys

1 fees to clear title, and the inability to have the quiet use, enjoyment and benefit of the property to which
2 they leased. ¶ 42.

3 Defendants argue that the Plaintiffs breached the Ground Lease first by abandoning the property.
4 They claim that after becoming aware of the breach the Defendants gave notice of the Termination of the
5 Lease Agreement but the Plaintiffs failed to respond within 60 days.

6 A claim of abandonment requires a showing of both physical abandonment and an intent to
7 abandon, and depends on the particular circumstances of each case. No arguments or allegations were
8 presented as to this issue. Thus, there remain disputed issues of fact as to whether the Plaintiffs
9 abandoned the property and as to whether the notice given was sufficient.

10 The Court finds that the Complaint has sufficiently pled facts to state a claim for breach of lease
11 agreement. Accordingly, the Court rejects the Defendants' argument and denies the motion to dismiss.

12 3. Interference with Contract

13 Defendants move to dismiss the third cause of action, interference with contract. They argue that
14 the Plaintiffs fail to satisfy all of the elements to properly state a claim for interference with contract.

15 To state a claim for interference with contract the Plaintiff must plead: "(1) a valid contract
16 between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional
17 acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or
18 disruption of the contractual relationship; and (5) resulting damage." *Pac. Gas & Elec. Co. v. Bear*
Stearns & Co., 50 Cal. 3d 1118, 1126 (Cal. 1990).

19 It is undisputed that there existed a valid Ground Lease between Plaintiffs and Defendant Atalig,
20 and that Defendant Quichocho had knowledge of this contract. ¶ 38. Plaintiffs have already laid out their
21 claims for damages above. The third and fourth elements are at issue for this cause of action.

22 Defendants argue that as the attorney for Atalig, Quichocho gave "truthful information" and
23 "honest advice" in advising Atalig of his rights to terminate the Ground Lease. However, the Complaint
24 alleges that Quichocho was "wrongfully and unlawfully conspir[ing with Atalig] to slander the title and
25 defraud Fujie and Plaintiffs out of their investment in the property" (¶16) and was in fact "engaged in a
pattern and practice of fraud, trickery and deceit and employed unsavory and malicious practices, in an

1 effort to defraud investors of their investments and to lure other investors to invest in properties they had
2 already sold or leased.” ¶ 28.

3 Plaintiffs contend that an attorney cannot shield his liability for fraudulent or malicious conduct by
4 simply stating that he was an agent for his client. “An attorney is liable if he knowingly commits a
5 fraudulent act that injures a third person, or if he knowingly enters into a conspiracy to defraud a third
6 person.” *Likeover v. Sunflower Terrace II, Ltd.*, 696 S.W.2d 468, 472 (Tex. App. 1 Dist., 1985).

7 Defendants argue further that an exercise of Atalig’s rights under the Ground Lease could not
8 constitute an actual breach or disruption of a contractual relationship. In support of their argument,
9 Defendants cite to the Restatements, which states:

10 There is of course no liability for interference with a contract or with a
11 prospective contractual relation on the part of one who merely gives
12 truthful information to another. The interference in this instance is clearly
13 not improper. This is true even though the facts are marshaled in such a
14 way that they speak for themselves and the person to whom the
15 information is given immediately recognizes them as a reason for breaking
16 his contract or refusing to deal with another. It is also true whether or not
17 the information is requested.

18 Restatement (Second) of Torts § 772 cmt. b (1977). Plaintiffs contend that an attorney cannot shield his
19 liability for fraudulent or malicious conduct by simply stating that he was an agent for his client.

20 Nevertheless, this cause of action raises another disputed factual issue of whether Quichocho was
21 merely giving honest advice to his client or whether he was an active participant in a scheme to
22 wrongfully terminate the Ground Lease. Therefore, the Court finds that the Complaint has sufficiently
23 alleged facts to support the claim of interference with contract. Accordingly, Defendants’ motion to
24 dismiss for failure to state a claim is denied.

25 SO ORDERED this 3rd day of February, 2011.



KENNETH L. GOVENDO
Associate Judge