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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

PRC LLC, SOPHIA P. TENORIO, AND PEDRO P. TENORIO, **Plaintiffs,** **v.** **CHANG SHIN RESORT SAIPAN CORPORATION dba HOTEL RIVIERA SAIPAN,** **Defendant.**	**CIVIL CASE NO. 12-0163** **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

THIS MATTER came before the Court on December 17, 2012 on a motion for summary judgment. Plaintiffs PRC, LLC, ("PRC"), Sophia P. Tenorio, and Pedro P. Tenorio (collectively "Tenorios") were represented by attorney Daniel C. Stafford. Defendant Chang Shin Resort Saipan Corporation dba Hotel Riviera Saipan ("Hotel Riviera" or "Defendant") were represented by attorney Jennifer Dockter. Upon thorough review of the record, oral argument, and applicable law, the Court renders its decision.

II. BACKGROUND

The case concerns a dispute over three ground leases (hereinafter Leases 1-3) covering four parcels (hereinafter Parcels 1-4) upon which the Hotel Riviera sits. Parcel 1[1] is subject of Lease 1,

[1] Parcel 1 is described as "TR. No. 22557-2, and containing an area of 5,996 square meters, more or less, as more particularly described on partial survey Plat of tract No. 22557, file No. 87-4372, recorded on December 22, 1987 with the Commonwealth Recorder." (Ex. ¶ 1.)

executed in 1988 between Jose A. Manalo as lessor and Chung Doo Young as lessee. Parcel 2[2] is the subject of Lease 2 executed in 1993 between Sophia P. Tenorio, as lessor and Hotel Riviera, as lessee. Parcels 3 and 4[3] are the subjects of Lease 3 also executed in 1993 between Pedro P. Tenorio as lessor and Hotel Riviera as lessee.

Plaintiff PRC acquired fee simple interest in Parcel 1 on April 8, 2009. (Ex. 5, 1:2.)

On July 13, 2012 Plaintiffs filed suit against Defendant to regain possession of the four parcels. On July 28, 2012 Defendant hotel filed an answer and several counterclaims. On October 15, 2012 Plaintiffs filed the instant motion for summary judgment seeking among other things damages for breach of contract, and summary eviction based on the Holdover Tenancy Act. On November 6, 2012 Defendant filed its opposition, and on November 21, 2012, Plaintiffs filed their reply.

III. LEGAL STANDARD

The Court must determine whether Plaintiff is entitled to summary judgment. A movant is entitled to summary judgment where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. . . ." NMI R. Civ. P. 56(c). The moving party bears both the initial and the ultimate burden of establishing its entitlement to summary judgment. *Furuoka v. Dai-Ichi Hotel (Saipan), Inc*., 2002 MP 5 ¶ 22. "If a moving party is the plaintiff he or she must prove that the undisputed facts establish every element of the presented claim." *Id.* (citations omitted). Where the "movant is the defendant, he or she has the correlative duty of showing that the undisputed facts establish every

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[2] Parcel 2 consists of real property in Fina Sisu, Saipan with an area of 10,000 square meters more or less as shown on drawing no. 112/79, registered as Document No. 8668, filed at the Land Commission Office. (*See* Ex. 2 ¶ 1.)

[3] Parcel 3 consists of real property in Fina Sisu, Saipan described as Tract no. 22557-1, containing an area of 3,411 square meters more or less as shown on plat no. 2160/93 filed with the Commonwealth Recorder as File No. 93-2812 (*See* Ex. 3 ¶ 1, "Exhibit A(1).") Parcel 4 consists of real property in Fina Sisu, Saipan described as Tract no. 22558-3, containing an area of 236 square meters more or less as shown on plat no. 22558. (*See* Ex. 3 ¶ 1, "Exhibit A(2).")

element of an asserted affirmative defense." *Id.* (citations omitted). Summary judgment must be denied where the movant fails to meet its initial burden. *See, e.g.*, *Sablan v. Roberto (In re Roberto)*, 2002 MP 23 ¶ 19-20 (reversing trial court's grant of summary judgment where movant failed to meet its initial burden).

"If . . . the moving party meets his initial burden then the burden of production shifts to the nonmoving party, who must produce just enough evidence to create a genuine fact issue." *In re Roberto*, 2002 MP 23 ¶ 18 (citations omitted). In shouldering its burden the opposing party may not simply rely upon the pleadings but must tender evidence of specific facts in the form of affidavits, and/or admissible evidence. NMI R. Civ. P. 56(e); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574, 586, n. 11 (1986). A fact is considered material "if its determination may affect the outcome of the case." *Triple J Saipan, Inc. v. Agulto*, 2002 MP 11 ¶ 8 (citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248-49 (1986)). In considering the motion, the Court views facts and inferences in the light most favorable to the non-moving party. *Aplus Co. v. Niizeki Int'l Saipan Co*., 2006 MP 13 ¶ 10. Where no genuine issue as to any material fact exists, the movant is entitled to judgment as a matter of law. NMI R. Civ. P. 56(c).

With these principles in mind the Court turns to the issues in the case.

IV. DISCUSSION

Plaintiffs argue that they are no genuine issues of material fact and they are entitled to summary judgment on all causes of action. They seek damages and eviction against the hotel based on the Holdover Tenancy Act codified at 2 CMC §§ 40201-40210. They also seek judgment against Hotel Riveria on its counterclaims. Defendant hotel contends: (1) Plaintiffs fail to meet their initial burden; (2) genuine issues exist; and (3) eviction is an inappropriate remedy because notice of default was insufficient, and equitable considerations justify relief from forfeiture. Defendant also argues that there are genuine issues going to its counterclaims sufficient to withstand the motion.

A. BREACH OF CONTRACT – PRC (First Cause of Action)

Plaintiff PRC fails to meet its burden to show breach of contract. To succeed on its breach of contract claim PRC must demonstrate that the undisputed facts establish (1) an enforceable agreement; (2) defendant's failure to perform; and (3) resulting damages. *Kyong Hee Park v. Dong Hyen Kim*, Civ. No. 02-0652B (NMI Super. Ct. August 11, 2004) (Order Granting in Part and Denying in Park Pl. Park, Kyong Hee's Mot. For Sum. Judgment Against Def. Kim, Dong Hyen at 6) (facts establishing mutual assent, consideration and failure of performance support claim for breach of contract). To be enforceable contracts require mutual assent and consideration. *Kyong Hee Park*, Civ. No. 02-0652B at 6.; Restatement (Second) of Contracts § 17(1) (1981).

Here, PRC has demonstrated that there is an enforceable agreement between Jose A. Manalo and Chung Doo Young, the original parties to Lease 1.[4] However, to prevail on its breach of contract claim it must show an enforceable contract between PRC and Hotel Riviera, the parties to this case.

A breach of contract claim rests on a contractual theory of liability. "Liability between an owner of real property and parties with a leasehold interest is predicated on privity." *Fusco v. Matsumoto*, 2011 MP 17 ¶ 34. Privity of contract exists by virtue of a contractual relationship such as a lease agreement, whereas privity of estate is based on a mutual or successive relationship to the same right in property. *Id*. (citations omitted). While privity of estate gives rise to certain duties,[5] a successor to an interest in land

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[4] Exhibit 1 is a lease agreement concerning the relevant property which was executed on December 30, 1988 by Jose A. Manalo for the lessor and Chung Doo Young as the lessee in 1988. (Ex. 1, 1:1, 6.) The lessor promises to provide the property for lessee's use for fifty-five years and the lessee promises to pay rent. (*See id*. 1,5.) The lease is signed by both of the original parties and initialed on each page indicating a manifestation of assent to be bound. (*Id*. 1-6.) Lease 1 indicates that the consideration for use of the property is the payment of rent and the other mutual covenants contained in the lease. (*Id*. 1:1.).

[5] Covenants which "run with the land" bind those in privity of estate. *Fusco*, 2011 MP 17 ¶ 36 ("Real covenants run with the land and pass by operation of law to successors in interest of land, meaning that they are enforceable against parties who are in privity of estate with one another regardless of whether privity of contract exists."); *see also* Restatement (Second) of Property: Landlord and Tenant 16.1(2) (1977) (stating requirements for obligation to run).

is not bound by the terms of a lease concerning the land absent an express promise. *Id.*; *see also Estate of Ogumoro*, 2011 MP 11 ¶ 40 ("An assignee who acquires a leasehold interest without expressly agreeing to assume any contractual provisions of the original lease acquires privity of estate with the lessor but not privity of contract.").

Here, the hotel is not bound to perform the covenants in Lease 1 because they did not promise to be bound. Hotel Riviera is the successor in interest to Chung Doo Young the original lessee, and PRC acquired fee simple interest in 2009 creating privity of estate between PRC and Hotel Riviera. (Compl. 1:8; Answer 1:1; Ex. 5 1:2); s*ee*, *Ogumoro*, 2011 MP 11 ¶ 36 ('[A]cquisition of [a] leasehold interest creates privity of estate . . . .') (citations omitted). However, PRC has not produced evidence of an express promise by Hotel Riviera to be bound to the terms of Lease 1. There is evidence that the hotel has historically paid $2400 a month in rent, which is the amount of rent due according to Lease 1. However, this evidence is not sufficient to show an express promise. Further, the remedy of forfeiture also requires privity of contract. *See id.* ¶ 54 ("leasehold provisions providing for forfeiture in the event of nonpayment of rent have historically required privity of contract.") Because PRC failed to establish an enforceable contract between itself and Hotel Riviera, the motion as to Count 1 for breach of contract is **DENIED**. PRC's claims for lease termination and eviction rest on its breach of contract claim, therefore summary judgment is also **DENIED** as to those claims.

B. BREACH OF CONTRACT – TENORIOS (Second and Third Causes of Action)

The Tenorios meet their burden to show that the hotel breached Lease 2 and 3. In their second and third causes of action, the Tenorios assert that Leases 2 and 3 were valid and binding agreements, which the hotel breached. Hotel Riviera does not dispute that Leases 2 and 3 are valid and binding agreements, (Compl. 34, 40; Answer 1.) Therefore, the relevant issue is whether the hotel breached. The Court first addresses breach and then addresses Hotel Riveria's arguments.

1. Hotel Riviera Breached

At issue is whether the hotel breached Leases 2 and 3. Where performance is due under a contract, any non-performance constitutes a breach. *Manglona v. Baza*, 2012 MP 4, 13 ("Breach of a contract occurs upon the nonperformance of a contractual duty of immediate performance.") (citations omitted).

The parties entered into both agreements on August 2, 1993. (Ex. 2, 27; Ex. 3, 27.) Section 5.3.4 of Lease 2 requires the hotel to pay Sophia P. Tenorio $5,324 rent per month on the first of the month. (Ex. 2, 5:5.3.4.) Lease 3 Section 5.1.4 requires Hotel Riviera to pay Pedro P. Tenorio $1996.50 rent per month on the first of the month. (Ex. 3, 5: 5.1.4.) The Tenorios produced a transactional ledger supported by the affidavit of Elisa Ongatangco the bookkeeper charged with maintaining the ledger for the relevant lease agreements, indicating that the record is kept in the normal course of business and would be admissible. (Ex. 7, 1; Aff. Elisa Ongtangco 1:2-2:8.) The ledger shows that at the time when Michael Tenorio delivered the notice of default, on or about March 20, 2012 (Ex. 13, 2:4), an outstanding balance of $39,248.02 for both leases combined was owed in rent and associated fees. (Ex. 7, 1.) On October 10, 2012, several months after the case was filed there was still an outstanding balance (*Id*.) Accordingly, the Tenorios have met their initial burden as to liability for past due rent, and the burden shifts to the Hotel Riviera to point to a genuine issue for trial. *In re Roberto*, 2002 MP 23 ¶ 18.

2. Hotel Riviera Fails to Raise Issues of Material Fact

Hotel Riviera contests the sufficiency of the notice of default and contends that the parties course of conduct gave rise to the hotel's reasonable expectation that the terms of the lease would not be strictly construed based on various informal payment plans. (Opp. 9-11.) The sufficiency of the notice goes to remedies under the Holdover Tenancy Act, rather than to liability. Therefore, the sufficiency of the notice does not present a genuine issue as to liability.

As to course of conduct, the hotel directs the Court to the following facts: over a period of three years various informal payment plans were accepted by the Tenorios, (Opp. 11; Ex. 4, 2:8.); the Tenorios have previously allowed the hotel to make lump sum payments to bring their account current; the hotel believed they would continue to allow it to make lump sum payments when the hotel fell behind on rental payments. (Aff. of Mee Rhan Jang 2:11,12.) The ledger also indicates that partial payments[6] were accepted in 2012. (Ex. 7, 1.)

For Hotel Riveria to withstand the motion the facts at issue must be material. A material fact is one where its determination may affect the outcome. *Triple J*, 2002 MP 11 ¶ 8 (citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248-49 (1986)). Put another way, "[t]o defeat a supported motion for summary judgment, the non-moving party must assert sufficient factual indicia from which a reasonable trier of fact could find in [the non-movant's] favor." *Castro v. Hotel Nikko Saipan, Inc*., 4 NMI 268, 272 (1995) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

The course of conduct evidence would be material to liability if it alters the rental terms for example by making rent due at a later date, or affects the contract's validity. The Court therefore addresses: (1) whether the course of conduct evidence alters the rental term; (2) whether it undermines the parties' intent to be bound.

i. Rental Terms

The course of conduct evidence is not admissible to alter the rental terms in Leases 2 and 3.

The parol evidence rule is a substantive rule of law which bars admission of extrinsic evidence to alter the terms of an integrated agreement. *Del Rosario v. Camacho*, 2001 MP 3 ¶ 68 (citations omitted). The hotel asks the Court to look to evidence of conduct which is extrinsic to the contract, therefore the Court must initially determine whether Leases 2 and 3 are integrated. *Del Rosario*, 2001 MP 3 ¶ 71

[6] The ledger reflects that four payments which were less than the smaller rental amount were accepted in 2012 on January 21, 2012 for $1550.00, on February 2, 2012 for $1000.00, on February 17, 2012 for $1500.00 and on March 9, 2012 for $1000.00. (Ex. 7, 1.)

(citing Restatement (Second) Contracts, § 209(2) (1981) ("Whether there is an integrated agreement is to be determined by the court as a question preliminary to determination of a question of interpretation or to application of the parol evidence rule.")). A contract is treated as integrated "[w]here the parties reduce an agreement to a writing which in view of its completeness and specificity reasonably appears to be a complete agreement," unless other evidence demonstrates that the writing was not a complete expression. *Id*. (quoting Restatement (Second) Contracts, § 209(3) (1981)). The inclusion of an integration clause is strong evidence that the parties intended the document to represent the entire agreement. *Merci Corp. v. World Int'l Corp*., 2005 MP 10 ¶ 17.

Here, Leases 2 and 3 appear to be complete expressions of the parties' agreement. Both leases are comprehensive and include an integration clause indicating that the lease "together with any exhibits or documents identified or referred to herein, contains the entire agreement of the parties . . . and that no other agreement . . . shall be binding . . ." (Ex. 2, 24:28; Ex. 3, 23:28.) The hotel has not produced evidence raising an issue as to integration. As a result, the Court finds that Leases 2 and 3 are integrated.

"Generally the parol evidence rule precludes evidence that contradicts the express terms of a contract . . . ". *Merci Corp.*, 2005 MP 10 ¶ 17. It is a substantive rule of law which "excludes evidence of prior or contemporaneous agreements or negotiations to change or modify the terms of a binding integrated agreement." *Del Rosario v. Camacho*, 2001 MP 3 ¶ 68 (citations omitted). Here, the agreement is integrated; therefore course of conduct evidence which is offered to alter the rental terms is inadmissible. Moreover, the Court interprets unambiguous terms according to their plain meaning without reference to extrinsic evidence. *Commonwealth Ports Auth. v. Tinian Shipping Co*., 2007 MP 22 ¶ 16. Here, both rental terms unambiguously require rental payment on the first of each month, in the amounts noted. Because there is no ambiguity, the Court is not free to look to extrinsic evidence to determine when rent was due. Consequently, the hotel cannot raise a genuine issue as to liability.

ii. Intent of the Parties

The course of conduct evidence does not raise an issue as to the parties' intent to be bound. To be valid contracts require mutual assent. *Kyong Hee Park*, Civ. No. 02-0652B at 6.; Restatement (Second) of Contracts § 17(1) (1981). Hotel Riviera argues that the course of conduct evidence goes to the intent of the parties which is not suitable for summary disposition.

To ascertain the intent of the parties Commonwealth Courts look to the plain meaning of contract terms. *Tinian Shipping*, 2007 MP 22 ¶ 16. Course of performance evidence going to intent is barred where there is no ambiguity on the face of the instrument. *Id*. Here, the hotel has not raised any ambiguity.

Having found no genuine issues of material fact as to liability for past due rent, summary judgment is **GRANTED** as to liability on Plaintiffs' claims 2 and 3 for breach of contract.

C. REMEDIES FOR BREACH OF CONTRACT – TENORIOS

There are several issues concerning the appropriate remedy in this case. Plaintiffs seek termination of Leases 2 and 3; damages for breach of Leases 2 and 3; and remedies under the Holdover Tenancy Act. Hotel Riviera counters that eviction is unwarranted because (1) the notice was insufficient under the Holdover Tenancy Act; (2) the Tenorios waived their right to terminate the lease by continuing to accept rent; and (3) equitable considerations justify relieving the hotel from forfeiting its interest in the property.

1. Tenorios' Right to Terminate

Plaintiffs must make an initial showing that they are entitled to terminate the leases. "Forfeitures of leased property are enforced at law only where the parties clearly intended forfeiture as a remedy." *Manglona v. Baza*, 2012 MP 4 ¶ 25. The intent of the parties is presumed to be encompassed within the plain meaning of contract terms. *Id*. at 12 (citations omitted); *see also, Tinian Shipping Co*., 2007 MP 22 ¶ 16.

Here, the Tenorios meet their initial burden to show they are entitled to terminate Leases 2 and 3 consistent with the lease terms. Lease 2 gives the lessor a right to terminate the lease upon thirty days written notice in the event of an uncured breach. (*See* Ex. 20, 20.2.) Lease 2 provides in relevant part:

> Any one of the following shall constitute a breach . . . : The Lessee shall default in the prompt payment of rent. . . for a period of thirty (30) days after notice of such default is given by the Lessor to the Lessee . . . unless the default is of such a nature that the same cannot be cured . . . within said (30) day period and the Lessee shall have promptly and diligently commenced to cure . . . and continued therewith with reasonable diligence and in good faith . . . until default [is] cured . . .

(Ex. 2, 17:19, 19:19.4.)

Lease 3 contains identical provisions. (*See* Ex. 3, 19: 19.4, 20, 20.2.) These provisions demonstrate that the parties intended lease termination as a remedy under the circumstances described. Pursuant to both leases notices "may be personally delivered or sent by mail, certified or registered, first class postage prepaid, to the addresses stated in this section, and shall be deemed to have been given at the time of personal delivery or at the time of mailing." (Ex. 2, 8:7.1; Ex 3, 7:7.1.)

Here, Plaintiffs produced evidence that on or about March 19, 2012 notice of default was given by certified mail to the appropriate address for the lessee. The ledger shows that no payment was made until May 15, 2012, (Ex. 7 at 1.) more than 30 days after the notice. Therefore, the Tenorios had a right to terminate the lease beginning April 18, 2012. Consequently, the Tenorios met their initial burden, and the burden shifts to hotel Riviera to raise an issue of material fact.

2. Genuine Issues Regarding Waiver

In response, Hotel Riviera raises a triable issue. The hotel argues that the Tenorios waived their right to terminate the lease by continuing to accept rental payments after cause for termination. (Opp. 11-12.) "Waiver is a voluntary relinquishment of a known right, with knowledge of its existence and intent to relinquish it." *Del Rosario*, 2001 MP 3 ¶ 56. "Waiver . . . is generally a question of fact, and

becomes a question of law only when the undisputed facts could reasonably compel only one inference. *Id*. (citations omitted.)

In *Sablan Enters. v. New Century, Inc*., 1997 MP 32 ¶ 8-9, the Commonwealth Supreme Court recognized that a landlord may waive his/her right to strict performance under a lease agreement. In that case the Court held that there was no waiver of the landlord's right to terminate for non-payment of rent because a no-waiver provision in the agreement specifically stated that the acceptance of rent shall not waive any right. *Id*. The Court was silent as to what conduct would constitute a waiver of forfeiture in the absence of a specific provision in the agreement dealing with the acceptance of rent.[7]

The Restatement[8] provides in relevant part that "[a] landlord may . . . waive the forfeiture by conduct which indicates that he does not regard the lease as terminated, in which case his remedies are limited to the recovery of rent." Restatement (Second) Prop.: Landlord Tenant 12.1 cmt. n (1976). The landlord's acceptance of rent which accrues after the right to terminate is the type of conduct which can indicate waiver. *See, e.g*., *Winder v. Martin*, 183 N.C. 410, 413 (N.C. 1922) (affirming waiver where landlord accepted rent accruing subsequent to a breach with knowledge of the breach)).

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[7] In *Sablan* the Court applied Restatement (Second) of Prop.: Landlord and Tenant § 12.1, cmt. c (1976), which deals with waiver of timely rent. The Court views comment "n" dealing with waiver of termination as more applicable on these facts. See *Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 61 **(**citing *Borja v. Goodman*, 1 NMI 225, 226, 234 ("[Title 7 CMC § 3401] does not expressly adopt a specific statute but adopts the Restatement in its entirety.") (Hillblom, Special Judge, concurring))).

[8] "[I]n the absence of written law or local customary law to the contrary" the restatements of law provide the rules of decision in the Commonwealth. 7 CMC § 3401; *see also In re Buckingham*, 2012 MP 15 ¶ 12 (explaining the "hierarchy" of law contained in section 3401).

Here, both leases contain a general no-waiver provision,[9] rather than one specifically dealing with the acceptance of rent after a breach. The general no-waiver clauses demonstrate the Tenorios' intent to preserve their rights generally.[10] Further, Michael Tenorio believed the leases "were no longer in effect as of April 18, 2012," because the hotel had not contacted him or made any payment, after he gave the March notice. (Ex. 4, 2:13.) He indicates that one week later he hired a surveyor to determine the lot lines (*Id*. 2:14). He also visited the property weekly to collect rent, assess property damage, and take steps to relet the property. (*Id*. 3:16-17.) During one visit, Michael Tenorio requested keys to the rooms from the employees, and put yellow tape around several of the entrances to "keep the Property (sic) secure so it would be marketable to prospective tenants." (*Id*. 3:19, 20.) Around May 16, 2012 Michael Tenorio encountered a person on the property who identified himself as the "new owner." Mr. Tenorio informed the person identifying himself as the new owner, that the leases had been terminated. (*Id*. 4:24, 25.) Michael Tenorio's actions are consistent with an intention to treat the lease as terminated.

The hotel argues that by allowing the hotel to stay on the property and accepting five rental payments without condition after the notice of default in March, the Tenorios' waived their right to terminate the leases. (Opp. 11-12; Ex. 6, 1; Ex. 7, 1.) The record reflects that the Tenorios accepted the following rental payments: $6000 on May 15, 2012; $6000 on May 16, 2012; $2300 on June 1, 2012;

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[9] The provision reads in full:

> No failure by either Lessor or Lessee to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Lease but each and every covenant, condition, agreement and the term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

(Ex. 2, 23:26-24:26; Ex. 3, 23:26.)

[10] The contents of the March notice (Ex. 8) would likely go to intent to terminate. However, because the document is not attached to an affidavit or authenticated in accordance with NMI R. Civ. P. 56(e) its contents are not properly before the Court. Rule 56(e) is more thoroughly addressed in Section IV(C)(3)(i).

$6000 on July 11, 2012; $2500 on August 22, 2012. (Ex. 7, 1.) Nothing in the record indicates whether these were payments for back rent already due or payments for rent accruing after the termination date. The absence of facts on this point raises a genuine issue as to whether the Tenorio's intended to treat the lease as continuing. The acceptance of five rental payments without reservation or condition could reasonably give rise to an inference that the Tenorios waived their right to terminate.[11] *Del Rosario*, 2001 MP 3 ¶ 56 ("Waiver . . . becomes a question of law only when the undisputed facts could reasonably compel only one inference.")). Resolution of this factual issue is not suitable for summary judgment. NMI R. Civ. P. 56(c). As to termination of Leases 2 and 3 the motion is **DENIED**.

3. Eviction Pursuant to the Holdover Tenancy Act

Plaintiffs seek eviction and double rent for the holdover period pursuant to the Act. To succeed on their claim for eviction Plaintiffs must demonstrate that they gave proper notice of default. The Holdover Tenancy Act has requirements as to delivery, form and substance of the notice.

i. Delivery

The Tenorios meet their burden to show that delivery of the notice complied with the Holdover Tenancy Act. Pursuant to the statute a lessee may be removed after default in the payment of rent upon three days notice "by the person entitled to the rent on the person owing the same." 2 CMC § 40204(b). The notice must be "by hand delivery . . . or, if the tenant is absent from the rented premises, by leaving a copy thereof at such place." *Id*.

Plaintiffs produce the Michael Tenorio's Supplemental affidavit (Ex. 13). Michael Tenorio swears that: he is an authorized agent entitled to enforce the terms of the ground leases between the Tenorios and the hotel (*Id*. 1:2, 3); he served the notice of default indicating that the Tenorios were terminating the leases in 30 days unless payment was made; the notice was served to a woman on the

[11] To the extent that the Tenorios rely on the June 7, 2012 notice, assuming the notice was proper under the lease terms, the Tenorios accepted two rental payments more than thirty days after that notice, creating a triable issue.

property named Joy Madias on or about March 20, 2012; she indicated that she was an employee; (*Id*. 2:4, 5). Michael Tenorio also indicates that he asked Ms. Madias to see the manager Ms. Lee in order to deliver the notice to her, but was informed that she was not present at the time (*Id*. 2:5); Ms. Madias signed a copy of the notice acknowledging receipt and he left an extra copy with her for Ms. Lee or another manager (*Id*.); a certified copy by mail with the return receipt was sent to the company's president Kim Do Sik at Chang Shin's registered address on or around March 19, 2012 (*Id*. 2:6). Given this evidence, Plaintiffs meet their burden to show that the notice of default was delivered in accordance with the Act.[12]

ii. Form and Substance

The Tenorios fail to meet their burden to show the notice itself was sufficient because the notice of default is inadmissible. The Holdover Tenancy Act requires that:

> The [notice required] shall contain a statement in substantially the following form: You are hereby notified that you are indebted to me in the sum of _____ dollars for the rent and use of the premises (address of the leased premises) , CNMI, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the _____ day _____of _____, 19__.
> (landlords name, address and telephone number).

2 CMC § 40204(b).

Michael Tenorio's affidavit indicates that a notice was given, but the Court cannot determine whether the notice substantially complied with 2 CMC § 40204(b). Plaintiffs produced a notice of default, marked as "Exhibit 8" but the document is not attached to an affidavit made upon personal knowledge which can authenticate it.

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[12] In oral argument the hotel contended without legal support that evidence introduced in Plaintiffs reply should not be considered because Plaintiffs should have properly supported their argument in their first motion. Rule 56 counsels the Court to consider "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any." NMI R. Civ. P. 56(c). Consequently, the supplemental affidavit of Michael Tenorio is properly before the Court.

NMI R. Civ. P. 56(e) provides that "affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence [and] all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith." It is improper to rely on documents which are either not attached or not authenticated. *Id*; *see also*, *Rayphand v. Tenorio*, 2003 MP 12 ¶ 95 ("it is improper to rely on [unauthenticated documents] for the purposes of summary judgment, for a motion for summary judgment must be based on admissible evidence.").

Here, Exhibit 8 is not attached to an affidavit made upon personal knowledge which can authenticate it. Although Plaintiffs produced two documents from Michael Tenorio, both of which are made on personal knowledge and refer to a notice of default, neither declaration attaches Exhibit 8 as the notice of default, or authenticates it. Consequently, it is improper for the Court to rely on Exhibit 8.[13] As a result, Plaintiffs fail to meet their burden to show that the form of the notice complied with the Act.

iii. June Notice

The Tenorios fail to meet their burden to demonstrate that the June notice complied with the Holdover Tenancy Act in relation to their leases. Plaintiffs assert that another notice of default was given on June 7, 2012. However, Plaintiffs have not demonstrated that this notice was delivered by a person entitled to collect rent for the Tenorios. 2 CMC § 40204(b). Instead, the record demonstrates that Allen Perez, an authorized agent of PRC authorized to enforce the lease between PRC and Hotel Riviera (Supp. Allen Aff. P 4.), directed Rowena Relado, also an authorized agent of PRC to deliver a notice of termination for both PRC and the Tenorios, without any apparent authorization to act on the Tenorios behalf.

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[13] The Court notes that federal authority interpreting the counterpart federal rule, allows courts to consider such evidence in their discretion in spite of Rule 56(e) defects, so long as no objection is made. *See*, *e.g.*, *Faulkner v. Federation of Preschool & Community Education Centers, Inc.,* 564 F.2d 327, 328 (9th Cir. 1977) ("Affidavits and documents not in compliance with Rule 56(e) may [] be considered by the trial court . . . in the absence of an objection . . . ")). There is no similar Commonwealth authority.

Consequently, Plaintiffs cannot meet their burden. Summary judgment is therefore **DENIED** as to eviction under the Holdover Tenancy Act.

4. Double Rent Pursuant to the Holdover Tenancy Act

The Tenorios cannot meet their burden to show they are entitled to double rent. The Tenorios seek double rent pursuant to 2 CMC § 40205. This provision reads:

> If the tenant holds over and continues in possession . . . after termination of the rental agreement without the permission of the landlord, the landlord may recover possession of the premises in the manner provided in 2 CMC 40206. The landlord may also recover double the amount of rent due on the premises, or any part thereof, for the period during which the tenant refuses to surrender possession.

"[S]tatutes should be construed according to their plain language." *In re Estate of Reyes*, 2012 MP 13 ¶ 13. Pursuant to 2 CMC § 40205 where the tenant holds over after termination, the landlord may do two things (1) recover possession, and (2) recover double rent for the holdover period. The right to double rent is contingent upon termination of the rental agreement, which begins the "holdover" period. Here, the Plaintiffs have not shown entitlement to termination, a pre-requisite to double rent and as a result summary judgment is **DENIED**.

5. Contract Damages for Unpaid Rent

The Tenorios have demonstrated they are entitled to judgment as to liability for breach of Lease 2 and Lease 3 because Hotel Riviera failed to pay monthly rent which was due. The issues remaining for disposition relate to damages.

Damages represent an "attempt[] to secure to the injured party the benefit of his bargain." *Tano Group, Inc. V. Dep't of Pub. Works*, 2009 MP 18 ¶ 31. (citations omitted). A party's right to damages is based on an expectation interest, as measured by:

> (a) the loss in the value to him of the other party's performance caused by its failure or deficiency, plus

(b) any other loss, including incidental or consequential loss, caused by the breach, less (c) any cost or other loss that he has avoided by not having to perform.

Id. ¶ 30 (quoting Restatement (Second) of Contracts § 247 (a)-(c) (1981)). Damages must also be foreseeable, adequately proved, and reasonably certain. *Id*. ¶ 31.

Here, the Tenorios have sufficiently demonstrated that the parties agreed on certain rental amounts giving rise to a reasonable expectation that those payments would be made. Damages based on that expectation are foreseeable in light of clear language in the leases indicating the rental amounts and late fees. Any amount of unpaid rent, plus any late fees under Lease 1 and 2 represent the amount of loss to the Tenorios as a result of Hotel Riviera's breach. Accordingly, judgment is **GRANTED** as to damages for non-payment of rent and late fees pursuant to the written leases.

However, the amount of damages at this time cannot be ascertained with reasonable certainty. The ledger produced begins in January of 2012 with an outstanding balance. (Ex. 7, 1.) The record does not demonstrate the basis of the total which was carried over from the previous year. Additionally, the parties represented to the Court at oral argument that at least one payment has been made since this lawsuit began which is not reflected on the ledger filed with the Court. Therefore, summary judgment is **DENIED** as to the amount of damages.

D. TRESPASS TO LAND (Fourth, Fifth and Sixth Causes of Action)

Plaintiffs cannot meet their burden to show trespass. Where a claim for trespass involves leased land, "the lessor and the lessee have different causes of action . . . ." *In Sik Chang v. Norita*, 2006 MP 2, ¶¶34-35. That is, "[d]amages for entry and injury to the possessory interest may be recovered only by the tenant, while damages for loss of value to the reversion . . . may be recovered from the landlord." *Id*. Holdover tenants retain the right to possession. *See* Restatement (Second) of Property § 14.7 (1977).

First, Plaintiffs are not in possession and cannot maintain an action based on harm to possessory rights. Second, Plaintiffs have not met their burden to show harm to their reversionary interests.

Plaintiffs produced evidence that the electricity had been turned off and the pool is filled with algae—these harms can be remedied. Further, the Court has yet to determine whether the leases have been terminated, therefore any damage to Plaintiffs' respective reversionary interests is speculative. Consequently, summary judgment as to trespass to land is **DENIED**.

E. COUNTERCLAIMS

Plaintiffs move for summary judgment on Hotel Riviera's counterclaims for breach of contract; breach of express warranty; tortious interference; conspiracy to interfere with relations; trespassing; quantum meruit. (Answer 7-9.) As such, Plaintiffs are the movant and the defendant as to the counterclaims.

Where the "movant is the defendant, he or she has the . . . duty of showing that the undisputed facts establish every element of an asserted affirmative defense." *Furuoka*, 2002 MP 5 ¶ 22. A moving party may also "discharge its initial burden by '[pinpointing] an absence of evidence to support the nonmoving party's case,'" *Id*. ¶ 23 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)); *see also*, *In re Roberto*, 2002 MP 23 ¶ 18. That is, "Rule 56 was designed 'to isolate and dispose of factually unsupported claims or defenses' and must be construed 'in a way that allows it to accomplish this purpose.'" *Furuoka*, 2002 MP 5 ¶ 23 (quoting *Celotex*, 477 U.S. at 323-34)). If defendant satisfies its initial burden the burden shifts to the non-movant to demonstrate a genuine issue for trial. *Id*. ¶ 23.

1. Breach of Contract (First Cause of Action)

Hotel Riviera's counterclaim for breach of contract fails. The claim rests on the assertion that Section 20 of Lease 1, a non-assignment clause, was breached by the transfer of the fee simple interest in Parcel 1 to PRC. Here, PRC is the movant and bears the initial burden of demonstrating a defense.

Section 20 prohibits assignment without the lessee's consent. (Ex. 1, 6:20.) PRC proceeds by highlighting evidence that it has not transferred its interest in the property since acquiring it in 2009, undermining an essential fact necessary for a finding in Hotel Riviera's favor. (Exhibit 5 ¶ 2.) Hotel

Riviera has not produced any evidence to the contrary. Accordingly, the Court **GRANTS** the motion for summary judgment, and **DISMISSES** the counterclaim for breach of contract.

2. Breach of Express Warranty (Second Cause of Action)

Hotel Riviera argues that Plaintiffs breached the express warranty of quiet possession contained in the leases. The Court addresses this claim as to the Tenorios first and as to PRC, second.

i. Tenorios

There are genuine issues of material fact related to whether the Tenorios breached express warranties in the leases. Leases 2 and 3 contain express warranties of quiet possession. (Ex. 2, 3:3-4:3; Ex. 3, 3:3.) The claim relies on visits to the property by Michael Tenorio, as a representative of the Tenorios. Plaintiffs move for summary judgment against the hotel on this counterclaim arguing that all entries by Mr. Tenorio were privileged because he was attempting to collect rent, prevent waste, and prepare to relet the premises. (Mem. Pl.'s Mot. Summ. J. 13:19-15:18).

To sustain their initial burden the Tenorios need to demonstrate that the entries onto the premises were privileged. *Furuoka*, 2002 MP 5 ¶ 22. There are several legal bases for the Tenorios' assertion of privilege. First, the Restatement provides[14] that "A landlord is privileged, upon default in payment of rent, to enter the leased land at a reasonable time and in a reasonable manner in order to demand or distrain for the rent." Restatement (Second) of Torts § 187 (1965). Second, a person who has a reversionary interest in land is also privileged to enter the property at a reasonable time and in a reasonable manner "in order to determine whether waste has been or is being committed . . ." Restatement (Second) of Torts § 186(a).[15] The privilege to determine if waste is being committed is

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[14] *See* Note 9.

[15] Plaintiffs also point to Restatement (Second) of Torts § 186(b) (1965), which provides that a reversioner is privileged to enter "in order to discover the need for and to make repairs which he is privileged to make." However, "[o]rdinarily, a landlord has neither a duty nor a privilege to make repairs on . . . unless by the terms of the lease such a duty is imposed or

only available "where the reversioner . . . reasonably believes in the existence of the circumstances stated." *Id*. cmt. b. Finally, the Tenorios may be privileged to take commercially reasonably steps to mitigate damages by reletting the property. *See Manglona v. Commonwealth*, 2005 MP 15 ¶ 59.

In March of 2012, when Michael Tenorio delivered the notice of default the hotel was in default on the rent. (*See* Ex. 7.) Therefore, collection of unpaid rent provided a valid basis for Michael Tenorio to enter the property. Michael Tenorio visited the property on a number of occasions in March, April and May of 2012. However, a privileged entrance must be done in a reasonable time and manner. Even if we assume Michael Tenorio entered the property to exercise a cognizable privilege, there are triable issues of fact regarding whether the visits were done in a reasonable time and manner. For example, Michael Tenorio asserts that "I never harassed staff, management, guests, or vendors." (Ex. 4, 3:17.) Whereas the hotel has produced contrary evidence indicating that: when Michael visited he would often speak in a loud voice and act aggressively (Aff. of Chon Kyong Hui 2:8); his behavior frightened some of the staff (*Id*. 2:9); customers overhead him and observed his aggressive demeanor (*Id*. 2:10); he verbally threatened to close the hotel regularly over the course of about two years (Aff. of Lee Hye Kyeong 1:2, 2:6); on May 17, 2012, he threatened to call the police unless the hotel manager gave him keys to the hotel (Chon Aff. 2:13-3:13); and on May 16, 2012 he demanded to be part of a meeting with an investor and refused to leave when asked (Chon Aff. 3:19). Based on this record, Hotel Riviera has demonstrated material issues, as to the reasonableness of Michael Tenorio's entrances. Accordingly, the motion for summary judgment is **DENIED**.

ii. PRC

Hotel Riveria's counterclaim against PRC for breach of quiet possession is not legally supported. Plaintiffs generally assert the defense of privilege. However, that defense is not necessary or relevant

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such a privilege is given, or unless a statute requires him to make such repairs." *Id*. cmt. c. The Court is aware of no basis requiring or allowing the Tenorios to make repairs in this case.

here because there is no factual basis in the record demonstrating that Michael Tenorio is a representative of PRC or that PRC interfered with the hotel's quiet possession in any other way.[16] As a result, judgment is **GRANTED** in favor of PRC, and the counterclaim is **DISMISSED**.

3. Tortious Interference (Third Cause of Action)

Hotel Riviera has raised triable issues related to tortious interference by the Tenorios, but failed to raise issues as to PRC. The hotel alleges that Plaintiffs willfully and intentionally interfered with contracts and potential contracts by "entering the property, threatening staff and management, blocking access, and discouraging potential investors." (Answer 7:36.) Plaintiffs seek judgment on this counterclaim against the hotel.

The CNMI recognizes a cause of action for tortuous interference with contract, prospective contract or economic advantage. *See Del Rosario*, 2001 MP 3 ¶ 104. "One who intentionally and improperly interferes with the performance of a contract between two parties, by inducing or otherwise causing a contracting party not to perform the contract, is liable for resulting loss to the other contracting party." *Id*. (citations omitted). To prove prospective economic advantage there must be a relationship reasonably probable to result in an economic advantage but for defendant's interference. *Id*.

i. Tenorios

The Tenorios are the movant and bear the initial burden. The Affidavit of Michael Tenorio asserts that near the end of April he engaged Castro & Associates to perform a survey to determine where the lot lines were at the Hotel Riviera. (Ex. 4, 2:14.) Michael Tenorio indicates that on the day the surveyors went to the property, he received a phone call from the hotel indicating that the surveyor had no legal right to be there. Tenorio immediately called the surveyor and asked him to leave. (Ex. 4, 3:15.) Plaintiffs also point to the affidavit of Candido Castro a surveyor for Castro & Associate (Ex. 9,

[16] The record demonstrates that all of the alleged disturbances were by Michael Tenorio, who was acting on behalf of the Tenorios. Nothing in the record indicates that he was acting on behalf of PRC.

1:2) who indicates that he did not encounter hotel guests or witness commercial activity while at the hotel. (*Id*. 2:4.) The surveyor also indicates that the work was done primarily on the perimeter of the property; noone asked him to leave; and the conversation he had with a hotel employee was neither heated nor hostile. (*Id*. 2:4,6.)

Defendant's account of the surveyor's visit differs. The affidavit of Chon Kyong Hui, the current manager of the hotel, indicated that on two or three consecutive days more than one person came to the property with equipment. (Chon Aff. 4:22.) Chon asserts that the surveyors moved around the perimeter in and around the lobby, parking lot and guest rooms and when asked to leave the surveyors refused and said they were there because Michael Tenorio told them to be there. (*Id*. 4:23.) The surveyor's visit alone does not amount to tortious interference, regardless of the different accounts, because there is no evidence that the surveyors interfered with a prospective relationship.

Second, Plaintiffs rely on the idea that the hotel was "blighted" to argue that there was no commercial activity, and therefore no interference. In support of this theory they marshal the following facts: as of May 5, 2012 there was no electrical power[17] at the hotel (Ex. 10, 2:6); there were no guests only unpaid employees; (*Id*. 2:7); Mr. Tenorio entered the premises, requested room keys, placed tape over several entrances and had a contentious conversation with the mysterious "new owner," only after the hotel had digressed to a "blighted state." (Ex. 4 3:19-20, 24-26.)

Hotel Riveria counters with the following facts. Chon Kyong Hui became the hotel's manager in October of 2012 (Chon Aff. 1:3.) Chon asserts that on May 16, 2012, she was preparing for the visit of Mr. Seo Dong Hee, a potential Korean investor who was set to arrive at 4:00 p.m. (*Id*. 3:14.) The hotel planned to have a meeting in the conference room with the investor employees and staff. (*Id*. 3:15.). Michael Tenorio arrived prior to the meeting hung yellow tape across the conference room, and told the

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[17] Plaintiffs assert that the water supply had also been terminated but the record citation provided by them does not mention water. (*See* Mem. Pl.'s Mot. Summ. J. 16:5-6 (citing Ex. 10, 2:6-7)).

hotel staff they could not enter because the hotel belonged to him. (*Id*. 3:16.). Michael Tenorio also hung yellow tape across the restaurant entrance. The hotel moved the meeting to a back office to get away from Tenorio. (*Id*. 3:17.). "The investor and more than 20 employees were present while Michael was hanging tape, talking in a loud voice, and acting in an aggressive manner." (*Id*. 3:18.). Michael Tenorio demanded to be a part of the meeting, was asked to leave but refused. Tenorio was still there after the meeting ended. (Chon Aff 3:19). Michael Tenorio told Mr. Seo, the potential investor, that (1) he would be cheated by the hotel; (2) the hotel ownership was a 'fraud,' and; (3) there was no reason for Mr. Seo to visit because the hotel belonged to him. Mr. Seo told the hotel manager that Michael was a 'very difficult' person and that the problem with him 'must be solved first' before he could go forward." (*Id*. 4:21.) The hotel manager has had no contact with Mr. Seo since then. (*Id*. 3:20-4:20).

A jury could reasonably infer from these facts that: (1) there was a reasonable probability that Mr. Seo and Hotel Riviera would form an economically advantageous relationship; (2) Michael Tenorio's conduct on May 16, interfered with that relationship; and (3) that interference caused damage. Consequently there are triable issues regarding the tortious interference claim against the Tenorios. Accordingly, the motion for summary judgment is **DENIED**.

ii. PRC

Hotel Riveria also counterclaims against PRC for tortious interference based on the same conduct. (*See* Answer 7:30-33). However, there are no facts demonstrating that Michael Tenorio is a representative of PRC therefore his actions cannot be imputed to it. Consequently, as to PRC, judgment is **GRANTED** and the counterclaim is **DISMISSED**.

4. Conspiracy to Interfere With Relations (Fourth Cause of Action)

Hotel Riviera's argument for civil conspiracy is meritless because Commonwealth Courts do not recognize a tort of civil conspiracy. *I.G.I. Gen. Contr. & Dev. v. Public Sch. Sys*., 1999 MP 12 ¶ 14

(adopting the majority view that there is no substantive tort of civil conspiracy recognized in the common law).

The Court understands the hotel's argument as follows: "The Supreme Court in *Ogumoro v. Ko* interpreting 7 CMC § 3401 held that in the absence of Commonwealth law, the Restatements govern, therefore *Ogumoro* overruled *I.G.I.* to the extent that it relied on the common law of the United States rather than the Restatements, and therefore this Court should apply the Restatement instead of the holding in *I.G.I.*" This argument ignores the hierarchy in Section 3401. Under Section 3401 the Court first looks to the written law including "the NMI Constitution and NMI statutes, case law, court rules, legislative rules and administrative rules, as well as the Covenant and provisions of the U.S. Constitution, laws and treaties applicable under the Covenant." *In re Buckingham*, 2012 MP 15 ¶ 12 (citations omitted). Then, only if "there is no controlling written law or local customary law," the Restatements govern. *Id*; *see also Estate of Ogumoro v. Ko*, 2011 MP 11 ¶ 64 (remanding for application of the Restatement in the absence of written or local customary law). Here, the holding in *I.G.I.* is controlling written law, binding on this Court. *See I.G.I*, 1999 MP 12 ¶ 14. As a result, the motion for summary judgment as to the claim for civil conspiracy is **GRANTED**, and the counterclaim is **DISMISSED**.

5. Trespass (Fifth Cause of Action)

The hotel has raised genuine issues of fact related to its counterclaim for trespass against the Tenorios, precluding summary judgment. Trespass to a tenant is based on harm to the possessory interest. *In Sik Chang v. Norita*, 2006 MP 2, ¶¶34-35. Holdover tenants generally retain that right. *See* Restatement (Second) of Property § 14.7 (1977). "One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally . . . (a) enters land in the possession of the other, or causes a thing or a third person to do so." Restatement (Second) of Torts § 158 (1965).

Here, the hotel retains the possessory right. Michael Tenorio intentionally entered the property, or directed someone to enter for him on several occasions. (Ex. 4, 2:14-15, 3:18, 4:24). Plaintiffs have not demonstrated that each entrance was privileged. For principally same reasons more fully articulated in Section IV(E)(2)(i) of this decision, summary judgment is **DENIED** as to the counterclaim for trespass.

6. Quantum Meruit (Sixth Cause of Action)

Plaintiffs seek judgment against Hotel Riviera on its counterclaim for quantum meruit. Hotel Riviera's claim is based on its assertion that the Plaintiffs will be unjustly enriched if the lease is terminated because the hotel invested millions of dollars in reliance on the fifty-five year term to recover its investment. The Court first addresses the claim in relation to the Tenorios and second addresses the claim in relation to PRC.

i. Tenorios

The hotel's claim of quantum meruit against the Tenorios is unsupported. The Commonwealth Superior Court has recognized recovery under a theory of quantum meruit writing,

> Courts have allowed quasi-contract recovery for services rendered when a party confers a benefit with a reasonable expectation of payment. That type of quasi-contract recovery, known as *quantum meruit* which means literally "as much as he deserves," entitles the performing party to recoup the reasonable value of services rendered when the circumstances are such that to deny recovery would be unjust.

Estate of Fidelia Rangamar Merur, Civ. No. 97-1257 (NMI Super. Ct. February 2, 2000) (Decision and Order as to Claimants Shakir's (CNMI) Inc., dba Bali Fashions and Mustafa Shakir at 6) (no quantum meruit recovery where agent breached fiduciary duty))); *see also Smith & Williams v. Yurl*, Civ. No. 04-0107E (Super. Ct. April 12, 2005) (Order RE: Compensation For Legal Services and Reimbursement of Advanced Costs at 6, 8) (ordering defendant to pay the reasonable value of attorneys for services rendered). Put another way, in order to succeed on a claim for quantum meruit, the claimant must show

that: (1) claimant conferred a benefit on the defendant; (2) the claimant has a reasonable expectation of payment; and (3) to deny recovery would work an injustice.

Here, Plaintiffs argue that the existence of binding contracts precludes quantum meruit recovery. This Court has determined that Leases 2 and 3 are binding agreements. The hotel has not demonstrated that their investment conferred a benefit upon the Tenorios which was outside the scope of their agreement. Quantum meruit arises in situations where no contract governs the parties' relationship. Here, by contrast, improvements to the property were contemplated by the parties when they entered those agreements. (record cit). Consequently summary judgment is **GRANTED** and this counterclaim is **DISMISSED**.

ii. PRC

Hotel Riviera raises genuine issues of material fact regarding its claim against PRC for quantum meruit. The Plaintiffs have not established privity of contract between PRC and Hotel Riviera as explained in Section IV(A) of this decision. However, the record supports the existence of a landlord tenant relationship between the hotel and PRC, based on privity of estate and the payment of regular rent. The hotel produced evidence that they have made investments and renovations totaling three million dollars since 2001 (Aff. of Mee Rhan Jang 1:4, 2:6-10.) The hotel also asserted that they reasonably relied on a practice by PRC of allowing them to make lump sum payments to become current on rent. (*Id*. 2:11-12.) The ledger produced by the Plaintiffs supports this assertion. (*See* Ex. 6.) This practice could reasonably give rise to the hotel's expectation that they would be allowed to stay on the property, run the hotel and recoup their investment. Finally, in the absence of an agreement to the contrary, a reasonable trier of fact could determine that allowing PRC to retain the benefit of the investment would be unjust. Consequently, the counterclaim is not suitable for summary judgment. Accordingly, summary judgment is **DENIED**.

V. CONCLUSION

For the foregoing reasons, consistent with this opinion the Court **GRANTS** summary judgment in favor of Plaintiffs with respect to Plaintiffs' Second and Third Causes of action for breach of contract, based on unpaid rent for Leases 2 and 3; **GRANTS** judgment with respect to the existence of contract damages for unpaid rent and applicable late fees under Leases 2 and 3, and **DENIES** with respect to Plaintiffs' other claims or portions thereof.

The Court **GRANTS** summary judgment in favor of Plaintiffs with respect to Defendant's counterclaims and accordingly **DISMISSES** those counterclaims or parts thereof as follows:

(1) Breach of contract against PRC;

(2) Breach of express warranty with respect to PRC;

(3) Tortious interference with respect to PRC;

(4) Conspiracy to interfere with relations with respect to all plaintiffs;

(5) Trespass with respect to PRC; and

(6) Quantum meruit with respect to the Tenorios.

The Court having found genuine issues of material fact suitable for trial **DENIES** Plaintiffs' motion for judgment with respect to Defendant's counterclaims as follows:

(1) Breach of express warranty with respect to the Tenorios;

(2) Tortious Interference with respect to the Tenorios;

(3) Trespass with respect to the Tenorios; and

(4) Quantum meruit with respect to PRC.

IT IS SO ORDERED this 8th day of March, 2013.

/s/
Joseph N. Camacho, Associate Judge