



By Order of the Court, Associate Judge JOSEPH N. CAMACHO

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

PRC LLC, SOPHIA P. TENORIO, and)	CIVIL CASE NO. 12-0163
PEDRO P. TENORIO,)	
)	
Plaintiffs,)	
)	ORDER GRANTING IN PART AND
v.)	DENYING IN PART DEFENDANT’S
)	MOTION FOR RECONSIDERATION;
CHANG SHIN RESORT SAIPAN)	DENYING PLAINTIFFS’ MOTION FOR
CORPORATION dba HOTEL RIVIERA)	RECONSIDERATION
SAIPAN,)	
)	
Defendant.)	

I. INTRODUCTION

These matters came before the Court on July 11, 2013 at 1:30 p.m. upon the motions of Plaintiffs and Defendant. Tiberius Mocanu appeared on behalf of Plaintiffs Sophia P. Tenorio and Pedro P. Tenorio (the “Tenorios”) and PRC, LLC (“PRC”). Jennifer Dockter and F. Matthew Smith appeared on behalf of Defendant Chang Shin Resort Saipan Corporation dba Hotel Riviera Saipan (“Hotel Riviera”).

The Plaintiffs in this case are landlords who seek damages from the Defendant tenant for breach of contract and trespass to land based on the Defendant’s failure to pay rent. In response to the breach of contract and trespassing claims, Hotel Riviera brought the following counterclaims against Plaintiffs: breach of contract, breach of express warranty, tortious interference, conspiracy to interfere with relations, trespass, and quantum meruit.

The contracts at issue are three separate leases involving four parcels of property, on which the Defendant operates a hotel. The first lease was executed in 1988 for a term of 55 years between lessor Jose A. Manalo and lessee Chung Doo Young. Plaintiff PRC argues that, due to succession in

1 interests, this lease is an enforceable contract between PRC and Hotel Riviera. The second lease
2 was executed in 1993 for a term of 55 years between lessor Sophia P. Tenorio and lessee Hotel
3 Riviera. The third lease was also executed in 1993 for a term of 55 years between lessor Pedro P.
4 Tenorio and lessee Hotel Riviera.

5 Plaintiffs filed a Motion for Summary Judgment on October 15, 2012. In that motion,
6 Plaintiffs requested an order of removal and monetary judgment against Defendant citing the
7 Holdover Tenancy Act and also requested entry of summary judgment against all of Hotel Riviera's
8 counterclaims. On March 8, 2013, the Court issued its Order Granting in Part and Denying in Part
9 Plaintiffs' Motion for Summary Judgment ("Summary Judgment Order").

10 Now, both parties ask the Court to reconsider portions of its Summary Judgment Order.
11 Based on a review of the filings, oral argument and applicable law the Court grants in part and
12 denies in part Defendant's Motion for Reconsideration and denies Plaintiffs' Motion for
13 Reconsideration.

14 **II. LEGAL STANDARD**

15 Under Rule 59(e) of the Commonwealth Rules of Civil Procedure, parties may file a motion
16 to "alter or amend" judgments rendered by the Court. Such a request must be justified by "an
17 intervening change in controlling law, the availability of new evidence, or the need to correct a
18 clear error or prevent manifest injustice." *Angello v. Louis Vuitton Saipan*, 2003 MP 17 ¶ 23 (citing
19 *Camacho v. J.C. Tenorio Enters., Inc.*, 2 NMI 407, 414 (1992)); NMI R. Civ. Pro. R. 59(e). The
20 decision to reconsider an already-decided issue by the trial court is an "extraordinary measure"
21 exercised at the discretion of the trial court. *See, e.g., Commonwealth v. AIC Marianas, Inc.*, Civ.
22 No. 10-0262 (NMI Super. Ct. Apr. 24, 2012) (Order Denying Defendants' Motion to Reconsider at
23 3). A party's desire to raise an argument that could and should have been addressed in the initial
24 proceedings does not justify reconsideration of the Court's already-rendered decision. *See, e.g.,*

1 *Rosenblatt v. United Way of Greater Houston*, 607 F.3d 413, 419 (5th Cir. 2010); *U.S. v. Resnick*,
2 594 F.3d 562, 568 (7th Cir. 2010); *Yeomalakis v. F.D.I.C.*, 562 F.3d 56, 61 (1st Cir. 2009).

3 **III. DISCUSSION**

4 **A. Defendant’s Motion for Reconsideration**

5 Defendant’s motion for reconsideration asks the Court to revisit two issues. First,
6 Defendant asserts that the Court’s finding that Hotel Riviera breached the two lease agreements it
7 has with the Tenorios (the “Tenorio Leases”) was clear error because: (1) the Court incorrectly
8 applied the parol evidence rule to bar consideration of the parties’ course of conduct after entering
9 into the lease agreements; and (2) the Court did not consider whether the breach was justified due to
10 Hotel Riviera’s right to abate the rent. Second, Defendant asserts that the Court’s dismissal of three
11 counterclaims against PRC was clear error because PRC did not meet its initial summary judgment
12 burden, and in the alternative, there were facts on the record demonstrating that Michael Tenorio
13 acted as an agent for PRC.

14 *1. Parol Evidence Rule*

15 Defendant is correct that the Court must correct a clear error of law concerning its
16 application of the parol evidence rule. The Court incorrectly applied the parol evidence rule to bar
17 consideration of evidence of the parties’ course of conduct after entering into the lease agreements.
18 However, the parol evidence rule only bars consideration of conduct occurring before and
19 simultaneous to the entrance of an integrated agreement. *See Del Rosario v. Camacho*, 2001 MP 3
20 ¶ 68 (citations omitted). Thus, the Court grants Defendant’s Motion for Reconsideration as to this
21 issue. The Court reconsiders its decision and applies the correct rule concerning course of
22 performance evidence as set forth in *Commonwealth Ports Authority v. Tinian Shipping Co.*, 2007
23 MP 22 ¶¶ 15-17.

1 When the terms of a written contract are unambiguous, the intent of the contracting parties
2 is determined by the plain language of the contract, and consideration of course of performance
3 evidence is barred. *Tinian Shipping*, 2007 MP 22 at ¶ 16. The Court already found that the Tenorio
4 Leases are unambiguous and require rental payment on the first of each moth. Summary Judgment
5 Order at 8.

6 Hotel Riviera argues that there is a difference between using course of performance
7 evidence to interpret the terms of the lease and using course of performance conduct to support a
8 finding that the landlord’s past conduct in accepting late rent payments waived the landlord’s right
9 to prompt payment, citing Restatement (Second) Property: Landlord & Tenant, § 12.1 cmt. c (1976)
10 to support this proposition. However, “a no-waiver provision in the lease preserves the landlord’s
11 right to payment of the rent on the due date.” *Id.* In this case, both of the Tenorio Leases include an
12 unambiguous no-waiver provision that prevents a particular waiver of breach from modifying the
13 terms of the lease or mandating that other breaches are waived. *See* Ex. 2, 23:26-24:26 and Ex 3,
14 23:26 to Pls.’ Mot. Summ. J. (“No waiver of any breach shall affect or alter this Lease but each and
15 every covenant, condition, agreement and the term of this Lease shall continue in full force and
16 effect with respect to any other then existing or subsequent breach.”).

17 Thus, consideration of course of performance evidence is barred. *See Tinian Shipping*, 2007
18 MP 22 at ¶ 16; *and* Restatement (Second) Property: Landlord & Tenant, § 12.1 cmt. c (1976).
19 While the Court cited the incorrect legal principle in the Summary Judgment Order, upon
20 reconsideration, the Court maintains that it reached the correct outcome: course of performance
21 evidence cannot be considered. As found in the Summary Judgment Order, the Court grants
22 summary judgment in favor of Plaintiffs with respect to Plaintiffs’ second and third causes of action
23 for breach of contract.

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1 2. *Rent Abatement*

2 On summary judgment the Court was not asked to render judgment on the issue of rent
3 abatement. The parties did not brief this issue and the Court did not reach it. Thus, the Court will
4 not consider this issue on reconsideration and denies Defendant’s Motion for Reconsideration as to
5 this issue. *See, e.g., Rosenblatt v. United Way of Greater Houston*, 607 F.3d 413, 419 (5th Cir.
6 2010); *U.S. v. Resnick*, 594 F.3d 562, 568 (7th Cir. 2010); *Yeomalakis v. F.D.I.C.*, 562 F.3d 56, 61
7 (1st Cir. 2009).

8 3. *Summary Judgment on Counterclaims Two, Three, and Four as to PRC*

9 Defendant argues that the Court should reconsider the decision to dismiss Hotel Riviera’s
10 counterclaims against PRC for breach of express warranty of quiet possession, tortious interference
11 and trespass. The Court denied the motion for summary judgment as to the Tenorios, finding that
12 there were genuine issues of material fact as to whether Michael Tenorio’s acts constituted breach
13 of quiet possession, tortious interference and trespass. However, the Court granted the motion for
14 summary judgment as to PRC, finding that there was a lack of evidence that Michael Tenorio was
15 an agent of PRC, thus his actions could not be imputed to PRC. This agency issue was raised by the
16 Court and was not briefed or argued by the parties during the summary judgment proceedings.
17 Hotel Riviera requests reconsideration of this issue based on two arguments: (1) The record
18 indicates that there is a genuine issue of material fact as to whether Michael Tenorio was an agent
19 of PRC; and (2) the Court granted summary judgment without requiring PRC to satisfy its initial
20 summary judgment burden. The Court agrees that it was clear error to grant summary judgment
21 without analyzing whether the moving party met its initial summary judgment burden. *See, e.g.,*
22 *Sablan v. Roberto (In re Roberto)*, 2002 MP 23 ¶¶ 19-20.

23 Plaintiffs’ arguments in opposing this motion to reconsider focus on the Defendant’s failure
24 to establish an agency relationship. However, the burden does not shift to the non-moving party to

1 prove that a genuine issue of material fact exists until the moving party has met its initial burden.
2 *See In re Roberto*, 2002 MP 23 ¶¶ 19-20.

3 As Hotel Riviera notes, PRC’s initial summary judgment burden could have been met by
4 PRC establishing that Michael Tenorio did not act as its agent. Reviewing the summary judgment
5 record once again, the Court finds no evidence presented by PRC to establish that Michael Tenorio
6 did not act as its agent. Nor did PRC point to a lack of evidence that Michael Tenorio acted as an
7 agent of PRC. Instead, the Court raised the issue of lack of agency relationship between PRC and
8 Michael Tenorio, in effect, prematurely shifting the burden to Hotel Riviera. Thus, the Court grants
9 Defendant’s motion to reconsider the issue of summary judgment as to PRC on Defendant’s
10 counterclaims of breach of express warranty of quiet possession (second counterclaim), tortious
11 interference (third counterclaim), and trespass (fourth counterclaim).

12 On reconsideration, the Court notes that the Plaintiffs’ arguments in support of summary
13 judgment on the counterclaims of breach of express warranty, tortious interference, and trespass
14 only concern the Tenorios. Thus, PRC did nothing to meet its initial summary judgment burden as
15 to those counterclaims. Because PRC failed to meet its initial summary judgment burden, the Court
16 need not even reach the issue of whether Hotel Riviera countered by raising a genuine issue of
17 material fact. *See In re Roberto*, 2002 MP 23 ¶¶ 19-20. Accordingly, in reconsidering the Summary
18 Judgment Order, the Court finds that it wrongfully granted summary judgment in favor of PRC on
19 the counterclaims of breach of express warranty, tortious interference, and trespass, and now denies
20 PRC’s motion for summary judgment on those counterclaims.

21 **B. Plaintiffs’ Motion for Reconsideration**

22 *1. Timing of Motion*

23 As a preliminary matter, Defendant argues that Plaintiffs’ motion for reconsideration was
24 not timely filed, and thus, should not be considered by the Court. Plaintiffs’ response, however,

1 outlines how their motion was filed within the timeframe established by the Commonwealth Rules
2 of Civil Procedure and the Commonwealth Rules for Electronic Filing and Services.

3 The Court finds that Plaintiffs' motion was timely filed. Because all documents filed in this
4 case are filed electronically, the timeline for filing is regulated by Rules 6(a) and 59(e) of the
5 Commonwealth Rules of Civil Procedure and Rule 6.6(d) of the Commonwealth Rules for
6 Electronic Filing. Civil Procedure Rule 59(e) sets the baseline timeline for filing a motion for
7 reconsideration as 10 days after entry of the judgment. NMI R. Civ. Pro. 59(e). Civil Procedure
8 Rule 6(a) clarifies that the day of the act is not included in computing time and that weekends and
9 holidays are not included because the prescribed time is less than 11 days. NMI R. Civ. Pro. 6(a).
10 Electronic Filing Rule 6.6(d) provides two additional rules that apply to "e-service," which "means
11 the electronic transmission of documents to a party, attorney or representative." Com. E-Filing R.
12 1.4. First, for a document "received via e-service, any document served . . . at a time when the court
13 is not open for business shall be deemed served at the time of next opening of the court for
14 business." Com. E-Filing R. 6.6(d). Second, "[w]hen a document is e-served, the responding party
15 shall be given one additional day, added to the number of days provided by the applicable rule, to
16 respond to the document." *Id.*

17 The Summary Judgment Order was entered at 4:32 p.m. March 8, 2013, after the Court's
18 usual business hours. So, under Rule 6.6(d), the order is deemed "e-served" March 11, 2013, the
19 next time the court opened for business. The first day that counts for the purposes of computing
20 time is March 12, 2013. *See* NMI R. Civ. Pro. R. 6(a). Commonwealth Covenant Day was
21 observed on March 25, 2013, so is not included in the time computation. *See* NMI R. Civ.
22 Pro. 6(a); 1 CMC §§ 311, 313. Thus, day ten was March 26, 2013, but as the order was delivered
23 electronically, parties get one extra day to respond, making March 27, 2013 the deadline for
24

1 submitting a motion under Rule 59(e) of the Commonwealth Rules of Civil Procedure.

2 Accordingly, Plaintiffs' motion, filed on March 25, 2013, was timely.

3 *2. Waiver of Termination*

4 In the Summary Judgment Order, the Court denied Plaintiffs' request for summary
5 judgment on the issue of whether the Tenorio Leases had been terminated. Summary Judgment
6 Order at 13. In making this decision, the Court found that the Plaintiffs met their initial summary
7 judgment burden with a preliminary showing that they are entitled to terminate the leases. *Id.* at 9.
8 The Court then found that summary judgment was inappropriate because Hotel Riviera raised a
9 genuine issue of material fact as to whether the Plaintiffs waived their right to terminate the leases
10 by accepting rent. *Id.* at 10. In their motion for reconsideration, the Plaintiffs ask the Court to
11 reconsider the finding that Hotel Riviera raised a genuine issue of material fact concerning waiver
12 of termination.

13 Plaintiffs argue that the Court committed clear error by applying the general rule that a
14 landlord's acceptance of rent after being entitled to terminate the lease may waive forfeiture. *See*
15 Restatement (Second) Property: Landlord & Tenant, § 12.1 cmt. n (1976). Plaintiffs argue that the
16 Court should have applied the exception to this general rule and also argue that equity favors the
17 application of the exception. These arguments were raised for the first time by Plaintiffs' in their
18 Motion for Reconsideration even though Hotel Riviera advanced the general rule expressed in the
19 Restatement during summary judgment proceedings. *See* Def.'s Opp'n to Pls.' Mot. Summ. J. at
20 11-12. Thus, the Plaintiffs already had an opportunity to argue that the exception to the general rule
21 applies and is more equitable, but Plaintiffs did not do so. *See* Pls.' Reply. to Def's. Opp'n to Pls.'
22 Mot. Summ. J. at 7-8. Accordingly, the Court declines to address these arguments as they were
23 raised for the first time in the Motion for Reconsideration, but could and should have been raised
24 during the initial proceedings. *See, e.g., Rosenblatt v. United Way of Greater Houston*, 607 F.3d

1 413, 419 (5th Cir. 2010); *U.S. v. Resnick*, 594 F.3d 562, 568 (7th Cir. 2010); *Yeomalakis v.*
2 *F.D.I.C.*, 562 F.3d 56, 61 (1st Cir. 2009).

3 Next, the Plaintiffs argue that the non-waiver clause in the Tenorio Leases demands, as a
4 matter of law, that the termination was not waived, thus the Court made a clear error by finding that
5 Hotel Riviera raised a genuine issue of material fact concerning waiver of termination. Plaintiffs
6 argue that the Court committed clear error by distinguishing the non-waiver clause in the Tenorio
7 Leases from the non-waiver clause present in the lease at issue in *Sablan Enters. V. New Century,*
8 *Inc.*, 1997 MP 32 ¶¶ 8-9. Plaintiffs characterize the Court’s distinction between these two
9 provisions as a “distinction without a difference.” Pls.’ Reply to Def.’s Opp’n at 5. The Court
10 disagrees.

11 The lease provision in *Sablan* states, in relevant part, “Acceptance of rent by the Lessor . . .
12 shall not be deemed to be a waiver by the Lessor or any breach by the Lessee;” while section 26 of
13 the Tenorio Leases is silent as to effect of acceptance of rent. *See Sablan*, 1997 MP 32 ¶8; and Ex.
14 2, 23:26-24:26 and Ex 3, 23:26 to Pls.’ Mot. Summ. J. Instead, Section 26 specifies that “failure . . .
15 to insist upon strict performance” does not constitute a waiver, and that the waiver of any particular
16 breach does not alter the terms of the lease or mandate waiver of future breaches. Ex. 2, 23:26-
17 24:26 and Ex 3, 23:26 to Pls.’ Mot. Summ. J. Unlike the lease in *Sablan*, the Tenorio leases do not
18 foreclose the possibility that accepting rent indicates waiver.

19 Accordingly, the Court finds no clear error in its analysis concerning the waiver of
20 termination, and denies Plaintiff’s Motion for Reconsideration.

21 **IV. CONCLUSION**

22 I. The Court **GRANTS** Defendant’s Motion for Reconsideration of the application of the parol
23 evidence rule. Upon reconsideration, the Court **GRANTS** Plaintiffs’ request for summary
24 judgment with respect to Plaintiffs’ second and third causes of action for breach of contract.

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- II. The Court **DENIES** Defendant’s Motion for Reconsideration of rent abatement.
- III. The Court **GRANTS** Defendant’s Motion for Reconsideration of summary judgment on counterclaims two, three and four as to PRC. Upon reconsideration, the Court **DENIES** PRC’s motion for summary judgment as to Defendant’s counterclaims of breach of express warranty of quiet possession (second counterclaim), tortious interference (third counterclaim), and trespass (fourth counterclaim).
- IV. The Court **DENIES** Plaintiffs’ Motion for Reconsideration.

IT IS SO ORDERED this 12th day of November, 2013.

_____/s/_____
JOSEPH N. CAMACHO
Associate Judge