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

FREDERIC ADA LEON GUERRERO and ERLINDA FLORES LEON GUERRERO Plaintiffs, v. CHANG KILL AHN, WINNIE HEEJA CHOI, YONG TAI LEE, and SEUNG H. CHOI, Defendants.	Civil Action No. 98-0945 Civil Action No. 98-0946 **ORDER ON PLAINTIFFS' MOTIONS FOR S-Y JUDGMENT**
FREDERIC ADA LEON GUERRERO and ERLINDA FLORES LEON GUERRERO Plaintiffs, v. BRENDA CHOON CHA, WINNIE HEEJA CHOI, CHANG KILL AHN, and SEUNG H. CHOI, Defendants.	

I. PROCEDURAL BACKGROUND

These matters came before the Court on Plaintiffs' motions for summary judgment. Joaquin C. Arriola, Esq. appeared on behalf of Plaintiffs. G. Anthony Long, Esq. appeared on behalf of Defendants. The Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision.

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II. FACTS

This dispute involves two leases executed by Plaintiff Frederic Ada Leon Guerrero.[1/]

The first lease at issue ("Lease 1") was executed on July 8, 1993, with Plaintiff Frederic Ada Leon Guerrero ("Plaintiff") as Lessor and Defendants Brenda Choon Cha ("Brenda") and Winnie Heeja Choi ("Winnie") taking a 55-year lease as Lessees on a 15,766 square meter parcel in Saipan. The following day, Defendants Brenda and Winnie subleased 1,766 square meters of the lot to Sammy S.Y. Lee and Defendant Chang Kill Ahn ("Ahn").

On March 17, 1995, Sammy S.Y. Lee assigned his sublease interest in the 1,766 square meters to Defendant Ahn, leaving Defendant Ahn as the sole sublessee from Defendants Brenda and Winnie as to the 1,766 square meter parcel.

On April 17, 1995, Defendant Brenda assigned the remainder of her leasehold interest in the 14,000 square meter parcel to Defendant Ahn. This transfer left Defendants Winnie and Ahn as tenants in common and lessees from Plaintiff as to the 14,000 square meter parcel.

On May 12, 1995, Defendant Ahn assigned his undivided interest in the 14,000 square meter lot to Defendant Seung H. Choi ("Seung") leaving Defendants Winnie and Seung as lessees from Plaintiff and tenants in common.

The second lease at issue ("Lease 2") was executed on March 14, 1995, with Plaintiff as Lessor and Defendants Ahn and Winnie taking a 55-year lease as Lessees on two 12,617 square meter parcels of land in Saipan.[2/]

On March 29, 1995, Defendants Ahn and Winnie subleased one of the lots to Defendant Seung. Subsequently, on July 28, 1995, Defendants Ahn and Winnie subleased the other lot to Defendant Yong Tai Lee ("Yong").

[1/] Plaintiff Erlinda Leon Guerrero was not a Lessor in either Lease 1 or Lease 2. However, she did provide her spousal consent for both Leases.

[2/] *See* Lease Agreement, dated March 14, 1995, attached as Exhibit A to Complaint for Rents and Cancellation of Lease.

In the months prior to April 1997, a dispute arose as to how the rent escalation clause in each Lease was to be interpreted.?' Consequently, Defendants Brenda, Winnie and Ahn sought "further assurances" from Plaintiffs under each Lease that the rental escalation clause would be based on a percentage of the prior monthly amounts, and not on a percentage of the unpaid balance of each Lease. Defendants never received such assurances from Plaintiff and therefore, withheld payment of rent under both Leases. In July/August 1997, the parties executed an amendment to each Lease confirming that the rental escalation clause would be based on the amount of prior rental payments and not on the unpaid balance of each Lease. However, no rental payments have been made under Lease 1 since March 8, 1997, nor have any rental payments been made under Lease 2 since March 14, 1997.

In February 1998, the Court entered a default judgment against Defendants Brenda and Winnie in the amount of $58,050.25 for nonpayment of rent under Lease 1 covering the rental period of March 8, 1997, to January 29, 1998.[4/] In April 1998, the Court granted Plaintiffs' motion for summary judgment against Defendants Ahn and Winnie for unpaid rent under Lease 2 for the rental period of April 14, 1997, to March 14, 1998, and ordered said Defendants to pay $56,578.45.[5/] Both judgments remain unpaid.

On November 23, 1998, Plaintiffs filed the instant motions seeking summary judgment on the issue of Defendants' liability for the unpaid rent from the time of the previous judgments to the present and whether the respective leases have been terminated.

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[3/] *See* § 2 of Lease 1 and 2.

[4/] *See* Default Judgment, dated February 2, 1998. The judgment included attorney's fees and costs totaling $4,122.25.

[5/] *See* Order for Summary Judgment, dated April 1, 1998, and Judgment, dated April 1, 1998. The judgment included attorney's fees and costs totaling $8,578.45.

III. ISSUES

1. Whether Defendants Brenda and Ahn are liable for unpaid rent under Lease 1?

2. Whether Defendants Yong and Seung are liable for unpaid rent under Lease 2?

3. Whether Plaintiff's failure to provide assurances discharged Defendants' obligation to pay rent under each lease?

4. Whether Plaintiff's were required to provide written notice of default under each lease prior to seeking collection on any unpaid rent?

5. Whether Plaintiff's failure to abide by the provisions of Public Law IO-67 prohibits the cancellation of each lease?

IV. ANALYSIS

A. Summary judement standard

The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of **Civil** Procedure. Rule 56(a) provides:

> A party seeking to recover upon a claim . . . may . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof

Corn. R. Civ. P. 56(a). Rule 56(c) continues:

> Th judgment sought shall be rendered forthwith if 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 and that the moving party is entitled to judgment as a matter of law.

Corn. R. Civ. P. 56(c). Once a movant for summary judgment has shown that no genuine issue of' material fact exists, the burden shifts to the opponent to show that such an issue does exist. Riley v Public School Svs., 4 N.M.I. 85, 89 (1994).

A. Assignees and sublessees

1. Lease 1

Defendants Brenda and Ahn contend that they cannot be held liable for any alleged unpaid rents under Lease 1 as they assigned their interests under Lease 1 prior to the alleged breach at issue.

The mere assignment of a lease by a lessee does not relieve the lessee of liability created by an express covenant to pay rent. Jedco Development Co.. Inc. v. Bertsch, 441 N.W.2d 664, 666

(N.D. 1989); Kintner v. Harr, 408 P.2d 487,497 (Mont. 1965). Rather, the lessor must have intended to release the lessee. Id.

In the case at bar, there is no indication that Plaintiff intended to release Defendant/Lessee Brenda from any rental obligations under Lease 1. Therefore, Defendant Brenda remains directly liable to Plaintiff for any unpaid rents under that Lease.

Defendant Ahn, on the other hand, acted as assignee and assignor under Lease 1. An assignee of a lease is directly liable to the lessor on all covenants in the original lease which run with the land. including the covenant to pay rent. Siragusa v. Park, 913 S.W.2d 915, 917 (Mo.Ct.App. 1996). Moreover, the assignee remains liable to the primary lessor on his contractual obligations under the lease even after he has made a further assignment and vacated. Broida v. Hayashi, 464 P.2d 285,289 (Hawaii 1970). Therefore, Defendant Ahn remains liable for any unpaid rents under Lease 1.

2. Lease2

Defendants Yong and Seung contend that they cannot be held liable for any unpaid rents under Lease 2 as they subleased the property from Defendants Ahn and Winnie.

A sublessee owes no obligation to the original lessor to comply with the covenants of the original lease because there is neither privity of estate nor contract between them. Haynes v. Eagle-Picher Company, 295 F.2d 761, 763, cert.denied, 369 U.S. 828, 82 S.Ct. 846, 7 L.Ed.2d 794 (1962). Therefore, the Court finds that Defendants Yong and Seung are not directly liable to Plaintiff for any unpaid rents under Lease 2.

B. Further assurances

Defendants contend that summary judgment is inappropriate here because a genuine issue of material fact exists as to whether their duty to pay rent under each Lease was suspended until Plaintiff provided the requested assurances.

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Section 6 of Lease 1 and 2 provides:

"FURTHER ASSURANCES: The Lessor shall execute, cause to be executed, or procure and furnish to Lessee, any further assurances of **title** consistent with the warranties of section 2[5] that may reasonably be required by Lessee for Lessee's protection or in connection with the use of the premises. "(emphasis added).

Section 4 of Lease 1 and 2 provides:

"LESSOR'S WARRANTY: Lessor is the owner of the Premises in fee simple, subject only to easements, restrictions, reservations, liens, encumbrances and estates on record. Lessor warrants that he is the sole, true owner and has the right to lease the same to the Lessee and that the leased Premises are free and clear of all claims and encumbrances whatsoever, anti with the performance of these covenants and conditions by the Lessee hereinafter contained that the Lessor guarantees and warrants that Lessee shall peaceably hold and enjoy the said Premises for the term set forth herein, without any suits, hindrances, molestations, or interruptions by any person, whomsoever claiming under any right or title from Lessor.

Lessor further warrants that no other persons or entity has any leasehold right or any right to occupancy or possession of the property."

In the case at bar, the "assurances" Defendants demanded but did not receive concerned the manner in which the rent escalation clause of § 2 was to be interpreted. The Court finds nothing within the language of either § 4 or 6 which would place upon Plaintiff the duty to provide the type of assurance Defendants sought regarding interpretation of the rent escalation clause. By their very terms, both sections encompass only further assurances ***as*** to Lessor's ***title*** to the real property at issue. See Martin v. Flovd, 317 S.E.2d 133, 136 (S.C.App. 1984)(a covenant for further assurance5 contemplates that the grantor will, upon demand, perform all acts necessary to provide further assurances of title).

Based on the foregoing, the Court finds that the duty of Defendants to pay rent under both Lease 1 and 2 was not suspended during the time that Defendants sought further assurances from Plaintiff. Therefore, Defendants Brenda, Ahn, Seung, and Winnie remain liable for any and all rents due and owing under Lease 1 from January 30, 1998, to the present. Additionally, Defendants Ahn and Winnie remain liable for any and all rents due and owing under Lease 2 from March 15, 1998 to the present.

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[6]/The Lessor's warranties are actually contained in § 4 of Lease 1 and 2.

C. Notice of default

Defendants contend that Plaintiff was obligated to provide them with notice prior to seeking to collect on any unpaid rent, in accordance with the terms of each Lease. As such, Plaintiff is not entitled to summary judgment on this issue.

Section 25 of Lease 1 and Section 21 of Lease 2 contain the same language under the heading "Default and Remedies". These sections provide, in pertinent part, as follows:

> "In the event that during the term of this Lease . . .
>
> (a) Lessee shall default in the payment of any installment of rent or other sum herein specified to be paid by Lessee and such default shall continue for ten (10) days;
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> . . . then and in any such event, Lessor shall have the right, at his election, at any time thereafter while such default or defaults continue, to re-enter and take complete and peaceable possession of the Premises . . . and to declare the term of this Lease ended . . . ".

Based on a literal reading of this clause alone, it would appear that Plaintiff was under no obligation to provide Defendants with any default notice under their respective Leases prior to seeking collection on past rent. However, Defendants point to subsection (b) of the Leases, which provides:

> "Lessee shall default in the observance or performance of ***any*** of Lessee's covenants. agreements, or obligations hereunder, and such default shall not be cured within thirty (30) days after Lessor shall have given to Lessee written notice specifying such default or defaults . . . ".(emphasis added).

Notwithstanding the apparent inconsistency in the lease provisions above, it is widely held that a landlord's filing of an action for lease termination due to nonpayment of rent constitutes sufficient notice of default under the lease. Baca v. Walgreen Co., 630 P.2d 1185, 1198, aff'd, 638 P.2d 898. cert. denied, 459 U.S. 859, 103 S.Ct. 130, 74 L.Ed.2d 112 (1982); Groendvcke v. Ellis, 470 P.2d 832, 835 (Kan. 1970); see also 51C C.J.S. Landlord and Tenant § 114(3) (1968). As such, the Court finds that Plaintiff did provide Defendants with adequate notice of default for nonpayment of rent under each Lease.

D. Public Law 10-67

As a final argument, Defendants contend that Plaintiff failed to comply with the notice requirements regarding lease termination under Public Law 10-67. As such, Plaintiffs are not entitled to summary judgment on this issue. In support of their argument, Defendants offer the decision in

Kang v. Kim" wherein the CNMI Superior Court denied the plaintiff/lessor's motion for default judgment for lease termination after concluding that the notice provisions for lease termination under Public Law 10-67 had not been satisfied. The Court finds the Kang decision controlling here. In Kang the plaintiff/lessor filed suit for past rent and lease termination after the defendants had failed to pay annual rental payments for two consecutive years. As a result, the Kang plaintiff filed suit for lease termination. Subsequently, however, the Court denied a motion for default judgment on the grounds that the plaintiff failed to offer any proof that he had complied with 60-day notice requirement under § 5 of Public Law 10-67. As in Kang, the instant Plaintiffs have likewise failed to submit any tangible proof of compliance with the 60-day notice requirement under § 5 of Public Law 10-67. As such, Plaintiffs are not entitled to summary judgment as to this issue.

V. CONCLUSION

For all the reasons stated above, Plaintiffs' motions for summary judgment are GRANTED in part. The Court finds that Defendants Brenda, Ahn, Seung, and Winnie are liable for all unpaid rents due under Lease 1 from January 30, 1998, to the present. In addition, Defendants Ahn and Winnie are liable for all unpaid rents due under Lease 2 from March 15, 1998, to the present. However, Plaintiffs are not entitled to termination of both Lease 1 and 2 at this time.

So ORDERED this 29 day of June, 1999.

TIMOTHY H. BELLAS, Associate Judge

[7] *See* Kang v. Kim, C.A. No.98-1033 (Order Denying Default Judgment, November 16, 1998).