

Law Revision

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

STRINGSTONE ENTERPRISES, INC.)
Plaintiff,)
v.)
J. LEE INVESTMENT CORPORATION,)
Defendant.)

Civil Action No. 99-0432
DECISION AND ORDER

I. PROCEDURAL BACKGROUND

This matter came before the Court on November 24, 1999 in Courtroom 223 at 10:30 a.m. on Plaintiffs motion for summary judgment and Defendant's cross-motion for summary judgment and partial summary judgment. Gregory J. Koebel, Esq. appeared on behalf of the Plaintiff, Stringstone Enterprises, Inc. Stephen J. Nutting, Esq. appeared on behalf of the Defendant, J. Lee Investment Corporation. 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.

FOR PUBLICATION

II. FACTS

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2 On May 20, 1991, Yang Hun Lee entered into a lease agreement on behalf of J. Lee
3 Investment Corporation ("J. Lee") with Stringstone Enterprises Inc. ("Stringstone"). Pursuant to the
4 agreement Stringstone took possession of the ground floor of a commercial building located on Lot
5 002 D 17 in Garapan on June 1, 199 1, for the purpose of operating a restaurant.

6 In June of 1998, Stringstone informed J. Lee that it was having financial difficulties due to
7 adverse economic conditions. In response, J. Lee reduced the lease payments on June 9, 1998.

8 In addition to informing J. Lee of the financial difficulties, Stringstone notified J. Lee that
9 other tenants in the building were interfering with Stringstone's restaurant business by allegedly
10 promoting prostitution in front of the restaurant. On June 17, 1998, J. Lee terminated the lease of
11 "Club 1," one of the establishments which was allegedly engaged in promoting prostitution.

12 On September 18, 1998, the lease agreement was further modified to allow for monthly rather
13 than quarterly payments. The following terms were agreed to: (1) J. Lee agreed to accept payment
14 of \$7,623.00 directly from Stringstone; and (2) J. Lee agreed to deduct \$847.00 each month from the
15 security deposit of Stringstone. Therefore, the total amount to be paid in rent, including cash
16 payments and the reduction of the security deposit, totals \$8,470.00. The reduction in rental
17 payments was to continue through March 1, 1999, a period of six months. J. Lee contends that this
18 reduction was expressly conditioned upon payment being made on time and there being no other
19 breach of the lease agreement or the amended lease agreement.

20 The amended agreement was executed for five consecutive months. However, J. Lee claims
21 that Stringstone failed to pay the reduced rent when due. Due to the alleged failure to pay, J. Lee
22 made a demand on December 14, 1998, for all outstanding rent due to be paid within three days of
23 the correspondence.

24 However, in a letter received on December 17, 1998, and dated December 11, 1998,
25 Stringstone claimed that such a demand constituted a breach of the agreement and stated that it
26 would cease all rental payments. The letter again complained about the alleged illicit businesses
27
28

1 above the restaurant and intimated that J. Lee's failure to expel the tenant constituted a breach of the
2 lease agreement.

3 On January 15, 1999, Stringstone vacated the premises and possession was transferred to J.
4 Lee. Also on January 15, 1999, Stringstone filed a complaint alleging: (1) breach of an implied
5 covenant of quiet enjoyment; (2) breach of a third-party beneficiary contract; and (3) breach of
6 mutual covenant. In response to Stringstone's complaint, J. Lee is counterclaiming for breach of the
7 lease agreement, lost rents, and costs incurred in re-leasing the premises. J. Lee calculates the total
8 claimed damages to be \$125,989.85.

9 II. ISSUES

10 1. Whether the Court should grant Stringstone's request for a declaratory judgment ordering
11 that the security deposit and prepaid rent be returned to Stringstone.

12
13 2. Whether the Court should grant Stringstone's motion for summary judgment pursuant to
14 Com. R. Civ. P. 56.

15
16 3. Whether the Court should grant J. Lee's cross-motion for partial summary judgment
17 pursuant to Com. R. Civ. P. 56.

18 IV. ANALYSIS

19
20 The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of
21 Civil Procedure. Rule 56(a) provides:

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

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

26 The judgment sought shall be rendered forthwith if the pleadings,
27 depositions, answers to interrogatories, and admissions on file, together
28 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.

1 Corn. R. Civ. P. 56(c). Once a movant for summary judgment has shown that no genuine issue of
2 material fact exists, the burden shifts to the opponent to show that such an issue does exist. *Riley v.*
3 *Public School Sys.*, 4 N.M.I. 8.5, 89 (1994). In addition, the court will view the facts in a light most
4 favorable to the nonmoving party. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172 (1990).

5
6 A. Stringstone's Demand for Return of Security Deposit and Prepaid Rent.

7 Stringstone claims that J. Lee does not have the right to retain the security deposit and the
8 prepaid rent while the present action is being resolved. As such, Stringstone has requested a
9 declaratory judgment ordering J. Lee to return such sums to Stringstone immediately.

10 Stringstone seeks the return of the security deposit, in the amount of \$21,000.00, and prepaid
11 rent in the amount of \$61,492.20, less the costs incurred by J. Lee to re-let the premises and any
12 amount of previously unpaid rent.

13 Rule 57 of the Commonwealth Rules of Civil Procedure states, in pertinent part:

14 The procedure for obtaining a declaratory judgment pursuant to law,
15 shall be in accordance with these rules . . . The existence of another
16 adequate remedy does not preclude a judgment *for* declaratory relief in
cases where it is appropriate. The court may order a speedy hearing of
an action for a declaratory judgment and may advance it on the
calendar.

17
18 Corn. R. Civ. P. 57. Rule 57 “leaves it to the discretion of the district court to determine whether
19 granting declaratory relief where there is an adequate state remedy would be ‘appropriate’ after
20 weighing the pertinent circumstances.” *Government Employees Ins. Co. v. Dizol*, 108 F.3d 999,
21 10 10 (9th Cir. 1997). Stringstone has the option of filing a complaint demanding the return of the
22 security deposit and prepaid rent and then pursuing such claim at trial. However, Stringstone has
23 chosen to seek a declaratory judgment.

24 Paragraph 5 of the lease agreement provides that “[t]he Landlord may retain the security
25 deposit, or any portion thereof, on account of any past due sums owed to Landlord hereunder, or for
26 any costs incurred due to the failure of the tenant to fulfill any of the terms, covenants, and
27 obligations of Tenant under this lease, including those of the basic lease incorporated hereunder.”
28

1 As such, pursuant to the terms of the lease agreement, J. Lee is entitled to retain the security deposit
2 as the possible costs incurred due to the failure or alleged failure of the **tenant** to fulfill any of the
3 terms, covenants, and obligations of Stringstone have yet to be determined. Therefore, Stringstone's
4 request for a declaratory judgment ordering the return of the security deposit is **DENIED**.

5 Stringstone also claims that it is entitled to the return of the prepaid rents in the amount of
6 \$61,492.20. The lease agreement does not state that J. Lee may retain the prepaid rents for any costs
7 incurred due to the failure of the tenant to fulfill any of the terms, covenants, and obligations of
8 Stringstone. The Court, therefore, orders that J. Lee return the prepaid rent in the amount of \$61,
9 492.20 to Stringstone, less the costs incurred by J. Lee to re-let the premises and any amount of
10 previously unpaid rent. As such, Stringstone's request for declaratory judgment as to the prepaid rent
11 is **GRANTED**.

12
13 B. Stringstone's Motion for Summary Judgment.

14 J. Lee argues that it is entitled to judgment against Stringstone in the amount of \$125,989.85
15 plus reasonable attorneys fees and costs. J. Lee argues that Stringstone breached the lease agreement
16 and is in default of the lease because it abandoned the premises as of January 15, 1999 and because it
17 failed to pay any rent from November 1, 1998, to January 15, 1999.

18 Summary judgment may only be rendered if there is "no genuine issue as to any material fact
19 and that the moving party is entitled to judgment as a matter of law." Corn. R. Civ. P. 56. In the
20 present matter, there is a question of material fact regarding whether Stringstone vacated the leased
21 premises due to the alleged illicit business practices of the neighboring tenants or whether Stringstone
22 vacated the premises because it was having financial difficulties due to the adverse economic
23 conditions in the Garapan area. The factual determination of which of these events caused
24 Stringstone to vacate the premises will determine which party, if any, breached the lease. Therefore,
25 granting summary judgment would be improper at this time as there are genuine issues of material
26 fact which must be examined by the trier-of-fact at trial. As such, J. Lee's cross-motion for summary
27 judgment is **DENIED**.

1 C. J. Lee’s Cross-Motion for Partial Summary Judgment.

Partial summary judgments are authorized by Rule 56(d), which states, in pertinent part:

2 If on motion under this rule judgment is not rendered upon the whole case or for all
3 the relief asked and a trial is necessary, the court at the hearing of the motion, by
4 examining the pleadings and the evidence before it and by interrogating counsel, shall
5 if practicable ascertain what material facts exist without substantial controversy and
6 what material facts are actually and in good faith controverted.

7 Corn. R. Civ. P. 56(d).

8 J. Lee argues that Stringstone breached the lease agreement and is in default because it
9 abandoned the premises on January 15, 1999, and because it failed to pay any rent from November 1,
10 1998, to January 15, 1999. As such, J. Lee argues that it is entitled to judgment against Stringstone
11 in the amount of \$125,989.85, plus reasonable attorneys fees and costs.

12 Stringstone argues that the lease agreement was breached by J. Lee due to the failure to
13 control the alleged illicit activities taking place at the establishments of the other tenants.

14 Summary judgment may only be rendered if there is “no genuine issue as to any material fact
15 and that the moving party is entitled to judgment as a matter of law.” Corn. R. Civ. P. 56. In the
16 present matter, there is a significant question of fact regarding whether Stringstone vacated the leased
17 premises due to the alleged illicit business practices of the neighboring tenants or whether Stringstone
18 vacated the premises due to the financial difficulties it attributed to the adverse economic conditions
19 in the Garapan area. The factual determination of which of these events caused Stringstone to vacate
20 the premises will determine which party, if any, breached the lease. Therefore, granting summary
21 judgment would be improper at this time are genuine issues of material fact that may only be
22 addressed by a trier-of-fact at trial. As such, J. Lee’s cross-motion for summary judgment is
23 DENIED.

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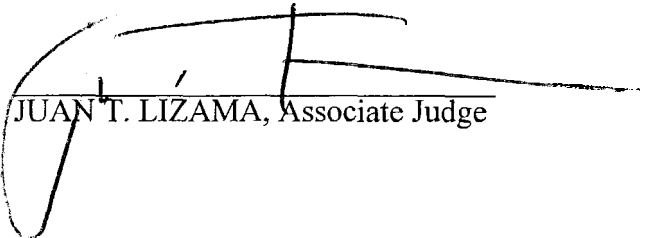
V. CONCLUSION

For the foregoing reasons, the Court finds that Stringstone is not entitled to return of the security deposit in the amount of \$21,000.00. However, the Court orders that J. Lee return the prepaid rent in the amount of \$61,492.20, less the costs incurred by J. Lee to re-let the premises and any amount of previously unpaid rent.

For the foregoing reasons, the Court finds there is a genuine issue as to material fact and that Stringstone is not entitled to judgment as a matter of law. As such, Stringstone's motion for summary judgment is **DENIED**.

For the foregoing reasons the Court finds there is a genuine issue as to material fact and therefore J. Lee is not entitled to judgment as a matter of law. As such, J. Lee's cross-motion for summary judgment is **DENIED**.

So ORDERED this 29 day of November, 1999.


JUAN T. LIZAMA, Associate Judge