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FOR PUBLICATION
IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

LUIS R. CABRERA
Plaintiff/ Appellee,

v.

YOUNG, SUN BAE, ET AL.
Defendant/ Appellant.

OPINION

Cite as *Cabrera v. Young*, 2001 MP 19

Appeal No. 98-018
Civil Action No. 95-0019
Submitted on the briefs: November 28, 2000

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ORIGINAL

BEFORE: MIGUEL S. DEMAPAN, Chief Justice, EDWARD MANIBUSAN, Justice *Pro Tempore*, and DAVID A. WISEMAN Justice *Pro Tempore*

DEMAPAN, Chief Justice:

¶1 Young Sun Bae, Tae Sook Kwon, Choon Kang Lee, Sang Im Chung Yang, Ouk Hee Byun Kim and In Soon Lee Kim (“Appellants”) appeal the Superior Court’s order granting summary judgment in favor of Appellee, Luis R. Cabrera (“Cabrera”). Summary judgment was based on Appellants’ failure to make timely payments to Cabrera in accordance with a lease agreement. The Superior Court found the failures warranted termination of the Lease. We affirm the Superior Court’s grant of summary judgment.

ISSUE PRESENTED AND STANDARD OF REVIEW

¶2 The issue in this matter is whether the lower court properly granted summary judgment in favor of the lessor, Cabrera, because Appellants defaulted and therefore forfeited the rights under the lease.

¶3 We review an order granting summary judgment *de novo*. *Diamond Hotel Co. Ltd., v. Matsunaga*, 4 N.M.I. 213, 216 (1995), *aff’d*, 99 F.2d 296 (9th Cir. 1996). Summary judgment may be granted where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Com. R. Civ. P. 56(c). In deciding a summary judgment motion, a court will construe the evidence and inferences drawn therefrom in favor of the non-moving party. *Rios v. Marianas Public Land Corp.*, 3 N.M.I. 512, 518 (1993). If the Court determines that no genuine issue of material fact exists, the analysis shifts to whether the substantive law was correctly applied. *Santos v. Santos*, 4 N.M.I. 206, 209 (1994). Issues of law are reviewed *de novo*. *Sablan v. Iginioef*, 3 N.M.I. 190, 197 (1990).

¶4 We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution, N.M.I. Const. art. IV, §3 (1997), and 1 CMC § 3102(a).

FACTUAL AND PROCEDURAL BACKGROUND

¶5 On February 15, 1989, Cabrera leased certain property to Appellants, Jong Ye Choi Kim and Young Sun Bae for a period of fifty years at a rental rate of \$2,000 per month. On October 11, 1989, Jong Ye Choi Kim and Young Sun Bae assigned their leasehold interest to Appellants Tae Sook Kwon, Choon Kang Lee, Sang Im Chung Yang, Ouk Hee Byun Kim and In Soon Lee Kim. Excerpts of Record ("E.R.") at 5.

¶6 The relevant sections of the Lease in this appeal are as follows:

Section 3. Rent. Lessee shall pay rental to the Lessor as follows:

a. For the first five (5) years of the term of the lease, the rental shall be TWO THOUSAND DOLLARS (\$2,000.00) per month payable on the 1st day of each month in advance.

c. Lessee shall pay on [sic] additional ONE HUNDRED DOLLARS (\$100.00), on any rental payment due over fifteen days. Failure to pay the monthly for a period of three months will automatically terminate this lease unless waived by Lessor.

Section 14. Default. Any one of the following shall constitute a breach of this Lease:

(d) The Lessee shall default in the prompt payment to the Lessor of rental of [sic] any other sum due hereunder, and such default shall continue for a period of thirty (30) days;

(e) The Lessee shall default in the prompt and full performance of any other term, covenant, or condition of the Lease, and such default shall continue for a period of thirty (30) days after notice of such default is given by the Lessor to the Lessee, unless default is of such a nature that the same cannot be cured or corrected within said thirty (30) day period and the Lessee shall have promptly and diligently commenced to cure and correct such default and shall have thereafter continued therewith with reasonable diligence and in good faith, in a manner so as to cure and correct the same as promptly as reasonably, practicable under circumstances and shall have continued therewith until the default shall have been cured or corrected.

Section 15. Remedies of Lessor for Breach of [sic] Lessee. In the event that Lessee breaches this lease and fails to make correction within the time provided, the Lessor may exercise any of the following remedies or any other remedy available to the Lessor at law or in equity, and all such remedies shall be cumulative and non exclusive of any one or more such remedies, and exercise of one remedy shall not be deemed to be an exclusive election of the remedy or remedies exercised or a waiver of the remedies not exercised.

* * *

(b) Lessor may terminate the Lease on giving thirty (30) days' written notice of termination to Lessee.

Lease Agreement, E.R. at 11.

¶7 On February 20, 1990, Cabrera wrote a letter to Appellants regarding untimely rent payments. Cabrera sent additional letters regarding untimely rent payments on: July 21, 1990, April 11, 1991, September 4, 1992, and September 16, 1992. (Supplemental Excerpts of Record "B").

¶8 The present action concerns rent for June, 1994. On July 19, 1994, Appellants wired \$1,985 to Cabrera for the June rent. On August 3, 1994, Cabrera notified Appellants in writing of their default for June and July rent and his intention to seek termination of the lease.

¶9 On August 19, 1994, Appellants, through their counsel, attempted to cure their default by tendering payments in the amount of \$4000, noting it was for July and August 1994 rent. Cabrera returned the money to Appellants on August 24, 1994.

¶10 On January 6, 1995, Cabrera filed a complaint to terminate the lease with Appellants. E.R. at 8. On June 6, 1996, Appellants filed a motion for summary judgment claiming that they were not in default and therefore entitled to the Lease. E.R. at 7. Cabrera opposed the motion and moved for summary judgment. E.R. at 7. The motions were heard on July 10, 1996. The lower court requested further briefings on the issue of whether Appellants' failure to wholly cure the breach permits termination of the lease. E.R. at 5.

¶11 The court granted Cabrera's cross motion for summary judgment, finding "that the Defendants' chronic failures to make timely payments to the Plaintiff in accordance with Section 3 of the Agreement do

N.M.I. 303, 301 (1992); see also *Sablan Enterprises, Inc. v. New Century, Inc.*, Appeal No. 95-020 (N.M.I. Dec. 9. 1997) (slip op.). The Court will analyze the lease as to whether the lower court misinterpreted the lease.

Was Rent Due Under the Lease

¶16 The Court turns to the Lease to determine whether rent was owed to Cabrera. Section 3 of the Lease provided that the failure to pay rent for a period of three months will automatically terminate the Lease. Section 3(a) of the lease requires Appellants to pay \$2,000 a month payable on the first day of each month. Further, Section 3(c) requires lessee to pay lessor an additional \$100 for any rental payment due over fifteen days. The record shows that Appellants paid only a majority of the rent due for the month of June. E.R. at 5, p.2. Specifically, on July 16, 1994, Appellants paid Cabrera \$1985. The rent payment was short by \$115. This comprised of the \$100 penalty under Section 3 (c) and \$15 deducted by the bank to cover the costs of the wire transfer. E.R. at 5, fn. 2.

¶17 The payment tendered on August 19, 1994, for \$4000 was for the July and August rent. By August 19, 1994, Appellants owed an additional \$100 charge for July, \$100 for August and the \$115 owed for the June rent.

Which Termination Clause Applies for a Default in Rental Payment

¶18 By tendering the rental payment in August of 1994, Appellant was within the three month delinquent payment period which triggers the automatic termination clause in the lease. Thus, the Section 3 termination stipulation does not apply as the delinquent rent was less than three months late. E.R. at 11, Section 3 (c).

¶19 Appellants argue that under section 15(b), "Lessor may terminate the Lease on giving thirty (30) days' written notice of termination to Lessee." Appellants contend that Section 15 of the Lease Agreement required Cabrera to give the Appellants thirty days from time of a default letter to cure the

default of non payment.

¶20 Cabrera counters that the Lease Agreement does not require him to give notice of default in the event of nonpayment of rent. The Lease sets forth the conditions for triggering a breach or default.

¶21 Under Section 14. Default. Any one of the following shall constitute a breach of this Lease:

(d) The Lessee shall default in the prompt payment to the Lessor of rental of [sic] any other sum due hereunder, and such default shall continue for a period of thirty (30) days;

(e) The Lessee shall default in the prompt and full performance of any other term, covenant, or condition of the Lease, and such default shall continue for a period of thirty (30) days after notice of such default is given by the Lessor to the Lessee, unless default is of such a nature that the same cannot be cured or corrected within said thirty (30) day period and the Lessee shall have promptly and diligently commenced to cure and correct such default and shall have thereafter continued therewith with reasonable diligence and in good faith, in a manner so as to cure and correct the same as promptly as reasonably, practicable under circumstances and shall have continued therewith until the default shall have been cured or corrected.

Lease Agreement, Section 14 (d), (e), E.R. at 11

¶22 At first glance there is an inconsistency between subsections 14(d) and 14(e) in that subsection (e) requires the Lessor, Cabrera, to provide written notice in the event of default in the “performance of any other term, covenant or condition of the Lease, and such default shall continue for a period of thirty days after notice of default is given” while subsection (d) does not provide any type of notice if default in the event Lessee fails to pay rent. Subsection (e), however, uses general language addressing “any other term, covenant, or condition of the lease” whereas subsection (d) specifically mentions default in the payment of rent. In such a situation, the preference in interpretation of contracts is that “specific terms and exact terms are given greater weight than general language.” RESTATEMENT (SECOND) OF CONTRACTS, § 203(C) (1981).

¶23 However under section 14(d), if Appellants defaulted, then failed to cure, then Cabrera was proper in concluding he could terminate the Lease. Section 14(e) applies to breach of any term other than rent,

as this has been provided by 14(d). Under the terms of the lease, no notice was required with respect to default in rental payments. The only notice requirement that was necessary was in the event the Cabrera sought to terminate the lease pursuant to Section 15(b). Accordingly, we do not find that Cabrera was required to provide written notice of default prior to seeking to collect unpaid rent. The trial court therefore did not clearly err in terminating the Lease.

¶24 We agree with Appellants that forfeiture is not favored. *See Food Pantry, Ltd. v. Waikiki Business Plaza, Inc.*, 575 P.2d 869 (Haw. 1978); *Fellows v. Marin*, 584 A.2d 458, 463 (Conn. 1991). However, in circumstances where lack of good faith persists with respect to continuous failure to pay rent under a lease, forfeiture is warranted. *See Groendycke v. Ellis*, 470 P.2d 832 (Kan.1970).

¶25 Appellants breached their lease agreement, by failing to timely pay rent. The Appellants “must bear the consequences of the risk [they] assumed.” *Camacho v. L & T Int’l Corp*, 4 N.M.I. 323, 327 (1996).

CONCLUSION

¶26 For the foregoing reasons, we hereby **AFFIRM** the lower court’s ruling of summary judgment in favor of Cabrera for termination of the lease agreement due to Appellant’s failure to make timely payments to Cabrera in accordance with Section 3 of the Lease Agreement.

Dated this 28 day of November, 2001.


MIGUEL S. DEMAPAN, Chief Justice


EDWARD MANIBUSAN, Justice Pro Tempore


DAVID A. WISEMAN, Justice Pro Tempore