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

CENTURY INSURANCE COMPANY, LIMITED,
Plaintiff-Appellant,

v.

PEDRO R. GUERRERO, et al.,
Defendant-Appellee.

SUPREME COURT NO. 2008-SCC-0007-CIV
SUPERIOR COURT NO. 06-0143

Cite as: 2009 MP 16

Decided November 20, 2009

Steven P. Pixley, Esq., Saipan, Commonwealth of the Northern Mariana Islands, for Plaintiff-Appellant
Douglas F. Cushnie, Esq., Saipan, Commonwealth of the Northern Mariana Islands, for Defendant-Appellee
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and JOHN A. MANGLONA, Associate Justice

CASTRO, J.:

¶ 1 Appellant Century Insurance Company, Limited ("CIC") appeals the trial court's order granting Appellee Pedro R. Guerrero's ("Guerrero") motion to dismiss CIC's complaint to enforce an agreement to lease real property on the grounds that it was barred by the six-year statute of limitations found in 7 CMC § 2505. CIC argues that the "Agreement to Lease" executed by the parties is governed by the twenty-year statute of limitations specified in 7 CMC § 2502(a)(2). Case law, principles of statutory construction, and principles of contract and property law lead us to the conclusion that suits to enforce an agreement to lease real property do not constitute actions to recover an interest in land for purposes of 7 CMC § 2502(a)(2); therefore, such suits face the time limitations of 7 CMC § 2505. Accordingly, the trial court's order is AFFIRMED.

I

¶ 2 The issue before us is whether the trial court properly granted Guerrero's motion to dismiss under Commonwealth Rule of Civil Procedure 12(b)(6) by applying the general catch-all six-year statute of limitations found in 7 CMC § 2505 instead of the twenty-year statute of limitations found in 7 CMC § 2502(a)(2). We review a trial court's grant of the motion to dismiss de novo. *Wabol v. Camacho*, 4 NMI 388, 389 (1996). This appeal also raises an issue of statutory construction, which is subject to a de novo review. *Town House, Inc. v. Saburo*, 2003 MP 2 ¶ 3 (citing *Commonwealth v. Cabrera*, 4 NMI 240, 250 (1995)).

II

¶ 3 In August 1993, Guerrero Brothers Inc. ("GBI") and the Commonwealth of the Northern Mariana Islands Public School System ("PSS") entered into a contract to construct Tinian High School for $3,849,400. As part of the agreement, GBI obtained payment and performance bonds from CIC equal to the project cost of $3,849,400. To ensure that GBI fully performed the terms of the construction contract, the parties entered into an "Agreement to Lease" on November 12, 1993.

¶ 4 Under the "Agreement to Lease," GBI agreed to execute a fifty-five year lease in favor of CIC for a parcel of land known as Lot H-328-R2 in the event it defaulted on the contract with PSS. The conditions that would trigger CIC's right to lease the property were: (1) GBI defaulted under the construction contract; (2) a permanent stop order was issued by PSS to GBI; and, (3) CIC became obligated to complete the contract. CIC recorded the "Agreement to Lease" at the Commonwealth Recorder's Office in October 1996.

¶ 5 In April 1997, GBI defaulted, and PSS subsequently terminated the contract. Pursuant to the bond agreements, PSS requested that CIC assume responsibility for completing the construction project. CIC hired SSFM Engineers who eventually completed the project on August 25, 1998. The parties agree that the accrual of CIC's cause of action commenced on the completion date.

¶ 6 In April 2006, nearly eight years after the project completion date, CIC filed a complaint to enforce the "Agreement to Lease." The parties stipulated that the three conditions triggering CIC's right to lease Lot H-328-R2 pursuant to the "Agreement to Lease" were met. Guerrero, however, filed a motion to dismiss, contending that CIC's suit was barred by the general statute of limitations pursuant to 7 CMC § 2505. He claimed that CIC's right to pursue a remedy under the agreement to lease accrued on or about August 25, 1998 when it completed construction of Tinian High School; therefore, CIC's filing suit on April 7, 2006 exceeded the six-year statute of limitations period as provided in 7 CMC § 2505. Conversely, CIC asserted that the "Agreement to Lease" constituted "an interest in land," and therefore, the action was governed by 7 CMC § 2502(a)(2)'s twenty-year statute of limitations period. The trial court dismissed the lawsuit.

III

A. Statutes of Limitations in the CNMI

¶ 7 The CNMI Legislature created different time limits for parties to file different causes of action. The general catch-all statute of limitations, 7 CMC § 2505, states "[a]ll actions other than those covered in 7 CMC §§ 2502, 2503, and 2504 shall be commenced within six years after the cause of action accrues . . . ." For example, a cause of action based upon a breach of contract, which is not one of the enumerated categories, must be filed within the six-year time period specified in 7 CMC § 2505. *Century Insurance Co. v. TAC International Constructors, Inc.*, 2006 MP 10 ¶ 1, 9, held that a contract dispute concerning indemnity and liability must be filed within the six-year statute of limitations period as specified in 7 CMC § 2505. The specific applicability statute of limitations at issue in this case, 7 CMC § 2502(a)(2), states "(a) [t]he following actions shall be commenced only within 20 years after the cause of action accrues: . . .(2) [a]ction for the recovery of land or any interest therein."

B. Prior Case Law Interpreting 7 CMC § 2502(a)(2)

¶ 8 This Court has never applied 7 CMC § 2502(a)(2) to encompass actions for the performance of a contract to lease land or to an actual lease agreement. Instead, 7 CMC § 2502(a)(2) is almost exclusively applicable to adverse possession cases. In *Teregeyo v. Fejeran*, 2004 MP 18 ¶ 3, the plaintiff claimed that the defendant had been denying him the use of a piece of his land since 1972. We held that while the elements of adverse possession only existed at common law, those elements must concurrently exist for twenty years as required by 7 CMC § 2502(a)(2). *Id*. ¶ 9. In *In re the Estate of Pilar De Castro*, 2009 MP 3 ¶ 38, we held that "the statutorily-prescribed time for establishing a claim for adverse possession is twenty years." This Court relied on 7 CMC § 2502(a)(2) in reaching its holding.[1]

[1] *See also Apatang v. Mundo*, 4 NMI 90, 93 (1994) (holding that 7 CMC § 2502(a)(2) governs adverse possession causes of action).

¶ 9 CIC argues that *Taman v. Marianas Public Land Corp.*, 4 NMI 287 (1995) supports its position that 7 CMC § 2502(a)(2) applies to any cause of action that concerns an interest in land. In that case, the plaintiff challenged a land title determination in favor of the Marianas Public Land Corporation. The claim was barred on res judicata grounds. Despite this we discussed the application of 7 CMC § 2502(a)(2) to that particular set of facts. We stated, "[a]s the plaintiff's sought monetary compensation and not *the recovery of, or an interest in, land* in the trial court action, we would apply 7 CMC § 2505, and not 7 CMC § 2502(a)(2)." *Id*. at 291 n.13 (emphasis added). *Taman* rephrased 7 CMC § 2502(a)(2) from its original wording of "[a]ctions for the recovery of land or any interest therein."

¶ 10 The construction of 7 CMC § 2502(a)(2) in *Taman* provides some, albeit weak, support for CIC's position. There we constructed the statute in such a way as to apply to causes of action for the recovery of land or to causes of actions for an interest in land. The footnote was, however, dicta because the case was decided on grounds wholly unrelated to 7 CMC § 2502(a)(2). Also, the wording of section 7 CMC § 2502(a)(2) in the case is literally different from how the statute appears as published because it places the word "land" in a different part of the clause than in the original code. This rewording dramatically alters the meaning of the statute. Therefore, *Taman* cannot support the contention that 7 CMC § 2502(a)(2) applies to any action concerning an interest in land.

¶ 11 The predecessor statutes to 7 CMC § 2502(a)(2) were Section 316 of the Trust Territory Code[2] and then later 6 TTC § 302. [3] These earlier statutes used language verbatim to 7 CMC § 2502(a)(2). We also acknowledge that interpretations by the Trust Territory High Court of statutes carried over from the Trust Territory period and codified into the current Commonwealth Code are not binding upon this Court, but such interpretations "will be helpful." *Robinson v. Robinson*, 1 NMI 81, 88 (1990).

¶ 12 The most factually similar case from those periods, *Crisostimo v. Trust Territory*, 7 TTR 375 (App. Div. 1976), involved a dispute regarding a land exchange agreement between the plaintiff Crisostimo and the Trust Territory government. The court noted that the "the gravamen of the complaint of the plaintiffs is a rescission suit and not a quiet title suit or a suit to recover land." *Id*. at 384. The effect of this holding was that the twenty-year statute of limitations embodied in Section 316 did not apply to land matters generally, but instead only applied to quiet title suits or suits to recover land specifically. While the "Agreement to Lease" between CIC and Guerrero was not a land exchange agreement like in *Crisostimo*, it is similar because both are written agreements concerning an interest in land. The court reasoned that Section 316 did not apply to agreements concerning land generally, but instead only to

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[2] Section 316 of the Trust Territory Code was recoded as 6 TTC § 302.

[3] "6 TTC § 302. Limitation of twenty years. – (1) The following actions shall be commenced only within twenty years after the cause of action accrues: . . . (b) Actions for the recovery of land or any interest therein."

actions to quiet title or recover land. Therefore, the case supports the position that 7 CMC § 2502(a)(2) should not apply to a case concerning an agreement to lease.

¶ 13 In *Oneitam v. Suiain*, 4 TTR 62 (1968), the court considered a dispute between the parties over eight different parcels of land. The court, in discussing Section 316, stated that "to bar an action to recover real property is the doctrine of adverse possession. However, Section 316 of the Trust Territory Code, which established a twenty-year statute of limitations on land matters will not go into effect until 1971." *Id*. at 70. Section 316 was only discussed in the context of an adverse possession claim and not in the context of land matters generally.[4]

¶ 14 Earlier courts construed 6 TTC § 302 in the same manner as Section 316. *In Re Estate of Taitano*, 8 TTR 325 (App. Div. 1983), involved a dispute between heirs to an estate that included real property. 6 TTC § 302 did not apply to the case because "[r]ather than being an action to recover an interest in land, this is an action in probate . . . ." *Id*. at 329. While CIC's claim is not factually similar to a claim in probate, the case illustrates that the earlier and verbatim version of 7 CMC § 2502(a)(2), 6 TTC § 302, was specifically applied to actions for the recovery of land and not just *any* action that involved the acquisition of land.

¶ 15 Earlier cases from this jurisdiction, and the jurisdictions that predated the CNMI, never applied 7 CMC § 2502(a)(2) or its predecessor statutes to an action to enforce a lease or to an action to enforce a contract to make a lease in the future. The current statute and its predecessor statutes have always been consistently applied to adverse possession and similar claims. On the other hand, it appears that this Court has never had the opportunity to interpret the statute in such a manner.

C. Other Jurisdiction's Statutes of Limitations

¶ 16 In *Watwood v. Yambrusic*, 389 A.2d 1362 (D.C. Cir. 1978), the plaintiff brought suit seeking, among other things, to impose a constructive trust against the defendant on real property that was transferred to the defendant. The plaintiff claimed that the land was not conveyed to the defendant, but was only held in trust as security for a loan. The plaintiff asserted that the fifteen-year statute of limitations for the recovery of land was applicable because she sought the re-conveyance of a piece of real property. The court of appeals affirmed the trial court's dismissal of the suit on the grounds that the time for filing the action was the three-year statute of limitations applicable to trusts and restitution. *Id*. at 1362. The appellate court noted that:

> [a]ppellant relies upon the language of D.C. Code 1973, § 12-301(1), allowing fifteen years for actions 'for the recovery of lands, tenements, or hereditaments . . . .' This

[4] *See also Esebei v. Trust Territory*, 1 TTR 495, 501 (Tr. Div. 1958) ("Section 316, Trust Territory Code provides a period of 20 years as the limitation of actions for the recovery of land . . . .").

> ignores the fact, however, that she has no legal ground for reconveyance. Her argument, as the trial court recognized, sounds in trusts and restitution . . . .

Id. at 1362 n.3. These facts are closely related to the present appeal because even though CIC is seeking the conveyance of a piece of property like the plaintiff in *Watwood*, the theory that is being sued under is not simply for the recovery of real property, but actually is for the recovery of property pursuant to an agreement to lease. Therefore, according to *Watwood* an action seeking the recovery of real property does not automatically trigger the longer statute of limitations period applicable to actions for the recovery of land when the claim actually concerns a different theory.

¶ 17 In *I-359, Inc. v. AmSouth Bank*, 980 So. 2d 419, 422 (Ala. Ct. App. 2007), a claim alleging a breach of a covenant contained in a lease triggered the state's longer ten-year statute of limitations, whereas a claim alleging a breach of contract contained in the lease must be filed within the normal six-year statute of limitations period. The alleged breaches all stemmed from the same lease agreement. Alabama's ten-year statute of limitations is similar to 7 CMC § 2502(a)(2) and is applicable to: "[a]ctions for the recovery of lands, tenements or hereditaments or the possession thereof, except as otherwise provided in this article." *Id*. at 423 (citing Code of Ala. § 6-2-33).

¶ 18 *I-359, Inc.* illustrates how different claims, even though the claims arise from the same document and concern land, are controlled by different statutes of limitation. Like some of the other cases discussed *supra*, just because a party's claim involves land does not mean that the statute of limitations applicable to the recovery of land will apply to all claims for real property. Under the reasoning of *I-359, Inc.*, if the plaintiff's breach of contract claims stemming from the lease agreement were controlled by the statute of limitations applicable to contracts, then CIC's claim that Guerrero breached the "Agreement to Lease" should also be controlled by the statute of limitations applicable to contracts.

¶ 19 In *Lurie v. Dombroski*, 13 Ill. App. 2d 152, 156-57 (1957), the plaintiff sought to establish a resulting trust in real property. Since there was no question regarding the ownership of the land, this was not a suit to recover real property, and the statute of limitations applicable to such actions did not apply to the appeal. *Id*. Also, in *Brown v. Ramsey*, 472 S.W.2d 322, 323-24 (Tex. App. 1971), a trespass-to-try-title suit was barred because even though the plaintiffs were trying to recover land, the suit was actually one to set aside an earlier judgment awarding the land to the defendants. The court distinguished an action for the recovery of real property from an action to set aside an earlier judgment in order to recover real property. These cases illustrate that other U.S. jurisdictions recognize a difference between actions to recover real property and other actions that involve acquiring real property. CIC's action to enforce the "Agreement to Lease" is more like an action seeking the acquisition of land under a contract theory, than an action seeking the recovery of real property.

D. Principles of Statutory Construction

¶ 20 "A basic principle of statutory construction is that language must be given its plain meaning." *Estate of Faisao v. Tenorio*, 4 NMI 260, 265 (1995) (citing *Commonwealth v. Hasinto*, 1 NMI 377 (1990)). The parties both argue that the plain meaning of 7 CMC § 2502(a)(2) supports its position. The statute provides a twenty-year statute of limitations period for "actions for the recovery of land or any interest therein." The plain meaning of the statute could either be interpreted as applying (1) to the recovery of land or to the recovery of an interest in land, or (2) to the recovery of land specifically or to any interest in land generally. The plain meaning of the language used in the statute could support either interpretation.

¶ 21 Neither of the above mentioned possibilities would result in one statutory provision being construed as to make another provision "inconsistent . . . ." *Faisao*, 4 NMI at 265 (citing *In Re Estate of Rofag*, 2 NMI 18, 29 (1991)). Whether 7 CMC § 2502(a)(2) applies only in a *recovery* context or whether it also applies more broadly to *any* case involving an interest in land would not result in the first clause of the statute being rendered inconsistent by the second. However, if 7 CMC § 2502(a)(2) was interpreted to apply to actions for *any* interest in land then the second clause of the statute would make the first clause, the *recovery of land* clause, "meaningless." *Id*. at 265. In essence, if the legislature intended 7 CMC § 2502(a)(2) to apply to causes of action for *any* interest in land then there was no reason for the legislature to include the provision specifying that it also applied to actions for the *recovery* of land. An action for the recovery of land would be a subset of an action concerning any interest in land. Therefore, CIC's interpretation of the statutory language causes the second clause of 7 CMC § 2502(a)(2) to render the first clause meaningless.[5]

¶ 22 While a plain reading of 7 CMC § 2502(a)(2) might support either CIC's or Guerrero's position, CIC's interpretation would result in the latter part of the statute rendering the former part meaningless. We reject this interpretation of the statute. Therefore, based upon principles of statutory construction, 7 CMC § 2502(a)(2) does not apply to actions concerning land generally.

E. Agreements to Lease and Actual Leases

¶ 23 Having determined that 7 CMC § 2502(a)(2) applies strictly to actions for recovery of land or any interest therein, we must now determine the exact interest CIC has in Lot H-328-R2, and whether it actually had any such real property interest to recover. If CIC's interest in the property is a lease, then this action might constitute an action for the recovery of the lease. An action for the recovery of a lease might constitute an action for the recovery of an interest in land. On the other hand, if CIC only has a contract to

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[5] Additionally, CIC's interpretation of 7 CMC § 2502(a)(2) might amount to an interpretation that would "defy common sense or lead to absurd results." *Del Rosario v. Camacho*, 6 NMI 213, 224 (2001). Considering how often land matters are litigated, it would be unreasonable to allow a party to file a suit up to twenty years after any dispute arose that concerned land. If anything, this position would undermine the security of interests in land because a party with an interest in land could be subject to suit for a dispute that arose up to twenty years earlier.

enter into a lease in the future, then it is unlikely that a contract would be considered an action to recover an interest in land.

¶ 24 An agreement to lease is legally different than a lease. *Motels of Maryland, Inc. v. Baltimore County*, 244 Md. 306, 311 (1966). Whether a document is a lease or a contract to enter into a lease in the future depends upon the intentions of the parties as evidenced by the written document. *Engle v. Heier*, 84 S.D. 535, 537 (1970). Furthermore, a document is likely to be construed as a lease if the words "lessor," "lessee," and "lease" are used, and "[l]anguage of present demise is used throughout the agreement." *Byrd Co's. v. Birmingham Trust Nat'l Bank*, 482 So. 2d 247, 253 (Ala. 1985). If the parties intended the document to be a contract to enter into a lease at a future date, then the agreement to lease must be a complete agreement for the court to enforce its terms. *Id.*

¶ 25 CIC claims that the "Agreement to Lease" constitutes an interest in land, whereas Guerrero asserts that the "Agreement to Lease" is a mere contract to enter into a lease in the future if certain conditions occurred. Since the parties are not presently in agreement regarding whether the "Agreement to Lease" is a lease or a contract to enter into a lease in the future, the terms used in the document control.

¶ 26 The "Agreement to Lease" states, "[p]otential lessors are willing to secure the faithful performance of Guerrero Brothers, Inc.'s obligation under the Bonds by executing a lease agreement for the Property to Century, pursuant to certain terms hereafter stated . . . ." Appellee's Excerpt of Record ("ER") at 9. The conditions that would trigger the execution of the actual lease were (1) GBI defaulting under the construction contract with PSS; (2) a permanent stop order being issued by PSS; and, (3) CIC becoming obligated to complete the construction project. The "Agreement to Lease" goes on to state that "upon the completion of the Tinian High School project by Century, to execute a lease agreement for the Property, which agreement shall be in substantial conformity to the agreement attached hereto as Exhibit A." *Id.*

¶ 27 Like in *Motels of Maryland, Inc.*, the language in the "Agreement to Lease" creates more than the possibility of a lease being executed in the future. Upon the occurrence of certain conditions Guerrero agreed in unequivocal language to execute a lease in favor of CIC. 482 So. 2d at 253. The parties have stipulated that those conditions occurred. Finally, the terms of the future lease were nearly certain because the terms were to be in substantial compliance with the document that was attached as Exhibit A to the "Agreement to Lease." *Id*. As a result, the "Agreement to Lease" should be analyzed as a lease because the language was certain and definite. However, whether a lease gives a party a recoverable property interest in land or whether it only gives the party contract rights for the purposes of the statute of limitations depends upon whether a lease is governed by property or contract law.

F. Principles of Contract and Property Law

¶ 28 We finally consider whether CIC's conditional lease interest contained in the "Agreement to Lease" is governed by contract law or property law. If the interest is governed by property law, then CIC might still be able to avail itself of the longer statute of limitations period found in 7 CMC § 2502(a)(2) on the basis that the lease is an interest in property that it is attempting to recover in this action. If, however, the interest is governed by contract law, then 7 CMC § 2505 will apply.

¶ 29 A lease is a highly complex document that is both a conveyance and a contract. *Maui Land & Pineapple Co. v. Dillingham Corp.*, 67 Haw. 4, 13 (1984). As discussed in *I-359, Inc.* above, some breaches of a lease will be governed by the statute of limitations applicable for the recovery of land and some will be governed by the statute of limitations applicable to contracts. 980 So. 2d at 422. The contract elements are, however, predominant because a lease is essentially a contractual relationship.[6] 67 Haw. at 13. As a result, a lease should be construed according to principles of contract law. *La Ponsie v. Kumorek*, 122 N.H. 1021, 1022 (1982). Additionally, a lease will be considered a contract for the purposes of the statute of limitations. *Martin v. Ray Lackey Enterprises, Inc.*, 100 N.C. App. 349, 356 (1990) (holding that an action on a lease that is not under seal is controlled by the statute of limitations applicable to contracts).[7]

¶ 30 Case law from other jurisdictions generally treats a lease dispute as an action based in contract law for purposes of the statute of limitations. The effect of this jurisprudence is that regardless of whether the "Agreement to Lease" is considered a lease or a contract, the ultimate outcome is the same. Since a lease is considered a contract for purposes of the statute of limitations, then CIC sought to enforce the "Agreement to Lease" too late. As the cited cases note, only a contract or a lease under seal will be given the benefit of a longer statute of limitations period. *Martin*, 100 N.C. App at 356; *Heirs of Roberts*, 235 Va. at 560. Therefore, the "Agreement to Lease" is unenforceable because the six-year statute of limitations for actions based in contract law found in 7 CMC § 2505 applies to this type of action.

IV

¶ 31 An action that seeks to enforce an agreement to lease is subject to the catch-all six-year statute of limitations of 7 CMC § 2505. Accordingly, the trial court's dismissal of CIC's claim against Guerrero is AFFIRMED.

SO ORDERED this 20th day of November, 2009.

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[6] *Wright v. Baumann*, 239 Ore. 410, 413 (1965) (holding that "a modern business lease is predominantly an exchange of promises and only incidentally a sale of a part of the lessor's interest in the land").

[7] *See also Heirs of Roberts v. Coal Processing Corp.*, 235 Va. 556, 560 (1988) (holding that a contract under seal is governed by a longer statute of limitations period); *See also Trainor v. Koskey*, 243 Ill. App. 24 (1926) (holding that an action to collect rent is an action based upon a written lease, and therefore, is an action based in contract).

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MIGUEL S. DEMAPAN
Chief Justice

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ALEXANDRO C. CASTRO
Associate Justice

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JOHN A. MANGLONA
Associate Justice