

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

Decided: November 28, 2001

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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 [hereinafter Appellants] appeal the Superior Court's order granting summary judgment in favor of Appellee, Luis R. Cabrera [hereinafter Cabrera]. Summary judgment was based on Appellants' failure to make timely payments to Cabrera in accordance with a Lease Agreement [hereinafter Lease]. 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 [1,2,3,4,5] 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. Iginoef*, 3 N.M.I.

190, 197 (1990).

¶4 [6,7] We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands 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 [hereinafter 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, 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 E.R. "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 were entitled to continue with 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 warrant termination of the agreement." *Cabrera v. Young, Sun Bae*, Civ. No. 95-019 (N.M.I. Super. Ct. May 7, 1998) (Order re Lease Agreement Termination), E.R. at 2.

¶12 Appellants timely appeal.

ANALYSIS

Interpretation of the Lease Agreement.

¶13 Appellants do not challenge the lower court's finding that they failed to pay rent promptly. Rather, Appellants assert that the lower court misinterpreted the Lease provisions. Appellants contend they were not in default of the rental payments, because they tendered most of the June rental payment in July. After receiving notice of Cabrera's intent to terminate the Lease, Appellants cured the default by tendering payment for the July and August rent in August. Appellants' argue that Cabrera's refusal to accept payment is the material cause of the nonpayment of rent and should not constitute a default by Appellants.

¶14 Cabrera counters that there is no provision in the Lease that requires him to give notice of default to the Appellants in the event of non-payment of rent. The only notice requirement is for termination of the Lease under Section 15(b). Cabrera complied with the terms of the Lease when he notified Appellants of his intent to terminate. Appellants disregarded the specific rental payment terms as stated in the Lease, resulting in termination of the Lease. Cabrera continually reminded Appellants that their rental payments were not timely nor in accordance with the conditions of the Lease.

¶15 [8,9] A written lease is a contract, subject to the same rules of construction as contracts. *Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323, 325-26 (1996). Where the language of a writing is plain and precise, the court can, as a matter of law, establish the parties' intent from the writing. *Ada v. K. Sadhwani's Inc.*, 3 N.M.I. 303, 310 (1992); see also *Sablan Enterprises v. New Century, Inc.*, 1997 MP 32, 5 N.M.I. 144. The Court will analyze the Lease as to whether the lower court misinterpreted the terms.

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, ¶ 2. Specifically, on July 16, 1994, Appellants paid Cabrera \$1985. The rent payment was short by \$115, 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, n.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, Appellants were 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) of Lease.

¶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 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 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 Section 14 of the Lease provided conditions for default. Any one of the following was to constitute a breach of the 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, Section 14(d) & (e); E.R. at 11.

¶22 [10] 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 of 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, and 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 for 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 [11] 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 due to Appellants' failure to make timely rental payments to Cabrera in accordance with Section 3 of the Lease.

Dated this 28th day of November, 2001.

