IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

LI FEN LUAN,
Plaintiff-Appellee,

v.

CALVIN C. TAGABUEL
Defendant, and

PACIFIC REALTY & MANAGEMENT CORPORATION,
Defendant-Appellant.

Supreme Court No. 2019-SCC-0015-CIV

OPINION

Cite as: 2021 MP 8

Decided April 21, 2021

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE JOHN A. MANGLOÑA
ASSOCIATE JUSTICE PERRY B. INOS

Superior Court Civil Action No. 16-0096
Associate Judge Kenneth L. Govendo, Presiding

INOS, J.:

¶ 1 Defendant-Appellant Pacific Realty and Management Corporation ("PRMC") and Appellee-Plaintiff Li Fen Luan ("Luan") both claim leasehold interests to the same property. Below, the jury found that Luan's interest prevailed and awarded compensatory and punitive damages. PRMC appeals the trial court's Order,[1] arguing: (1) the jury's finding that Luan was a bona fide purchaser was not supported by sufficient evidence; and (2) the court abused its discretion in awarding punitive damages based on an ambiguous verdict form. For the following reasons, we AFFIRM the Order.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Calvin C. Tagabuel ("Tagabuel") leased Lot No. 014 H 023 located in Chalan Kanoa, Saipan to Cheong Pui Ng ("Ng") for twelve years, from September 10, 1999 to September 10, 2011, with an option to extend the term. Two years later, in 2001, PRMC[2] paid Tagabuel $1,000 to extend the lease for another three years, to expire in 2014. Neither the 1999 lease nor the three-year extension was recorded. Tagabuel and Ng orally agreed to extend the lease for a second time. Prior to the expiration date, however, Ng told Tagabuel that he was not ready and did not have the money. They had not entered into a written agreement when the lease expired in 2014. In the meantime, PRMC constructed an apartment complex and rented the units to tenants.

¶ 3 Tagabuel wanted to secure another lessee and sought out Kevin Tang. Tang instead introduced Tagabuel to Luan, who was familiar with the premises because her coworker lived in one of the apartments on the property. On September 30, 2014, Tagabuel, without disclosing PRMC's option to extend, entered into a lease agreement with Luan. Luan then engaged a title company to conduct a title search, which showed Tagabuel held title to the premises. PRMC's lease was not in the chain of title because it was not recorded. The title company's researcher Jeffery Roligat ("Roligat") learned of PRMC's unrecorded lease and notified Luan of its existence. He also assured her that the lease expired on September 10, 2014. Based on the title report and the conversation with Roligat, Luan did not inquire with the tenants on the property. Luan recorded her lease on November 6, 2014.

¶ 4 PRMC, however, was unaware of Luan's lease and continued to occupy the property. Luan eventually met with the tenants, informed them of the new ownership, and gave instructions to forward rental payments to her or vacate the property. But the tenants claimed they were legally obligated to pay PRMC and thus continued to make payments to PRMC. When Ng learned of Luan, he tried

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[1] *Luan v. PRMC,* No. 16-0096 (NMI Super. Ct. Sept. 12, 2019) (Order Partially Granting Pacific Realty and Management Corporation's Motion to Amend Judgment) ("Order").

[2] Ng is the President of PRMC. Although Ng signed the lease as an individual, PRMC paid for the 2001 extension and appears to assume financial responsibility of the property.

to purchase the interest from her, but they failed to reach an agreement.[3] To keep the property, Ng pressured Tagabuel into signing a second lease for $15,000 on December 16, 2014. The lease stated "[t]he term of the extension of the lease is for a period of thirty (30) years *effective September 10, 2014* to and including September 10, 2044." Appellant's Appendix ("App.") at 494 (emphasis added). PRMC recorded the lease on December 23, 2014, after which Tagabuel informed Luan of his intent to return the $15,000 and terminate Luan's lease.

¶ 5 Luan sued Tagabuel, demanding specific performance of the terms and conditions of the lease agreement. PRMC intervened, seeking to void the lease agreement between Luan and Tagabuel. In response, Luan added a trespass claim to her suit because the apartment tenants continued to reside on the property and pay rent to PRMC.

¶ 6 At trial, the jury examined all the leases and heard from multiple witnesses. Tagabuel testified that Ng was unable to exercise the option to extend by the expiration date and pressured him into backdating a new lease. PRMC's employee, Ms. Kintol, testified that there was no written lease with PRMC prior to Luan's recorded lease. Roligat testified that the title was free and clear on September 10, 2014. Before jury deliberation, Luan guided the jury through each question on the verdict form with instructions.

¶ 7 The jury found Luan to be a bona fide purchaser and PRMC a trespasser. The jury also found that PRMC's actions were willful, reckless, and with malice. The jury awarded Luan $80,000 in compensatory damages for quiet title, $50,000 in compensatory damages for trespass, and $300,000 in punitive damages.[4]

¶ 8 PRMC moved to strike the award of compensatory damages in the Judgment and the court agreed, because quiet title is an equitable remedy and damages were therefore inappropriate. App. at 11. PRMC also moved to remove the punitive damages award because the verdict form allowed the jury to award punitive damages for the quiet title and trespass claim. Punitive damages can only be awarded to the trespass claim. The court held that the parties were provided ample time during trial to review the jury instructions and verdict form, the parties participated in the drafting of the form, and PRMC failed to object even after Luan presented instructions to the jury. And, as written, the form could be read to award punitive damages solely for the trespass claim. Order at 2.

¶ 9 PRMC appeals.

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[3] Ng and Luan met several times after Ng learned of Luan's lease, and offered to purchase the lease from Luan. On one occasion, he demanded Luan to purchase the property for $30,000 from him. On a separate occasion, Ng offered Luan $15,000 minus the amount Tagabuel had previously borrowed as "pre-payments" for a second lease.

[4] *Luan v. PRMC*, No. 16-0096 (Super. Ct. April 24, 2019) (Judgment after Jury Verdict) ("Judgment").

II. JURISDICTION

¶ 10 We have appellate jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 11 We review de novo whether substantial evidence supports the jury's finding that Luan was a bona fide purchaser. *See Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 12 (citing *Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 3). We review the court's decision to award punitive damages for abuse of discretion. *Cho v. Cho*, 2002 MP 24 ¶ 8 (citing *Pangelinan v. Itaman*, 4 NMI 114, 117 (1994)). Absent a proper objection to jury instructions or a verdict form, we review for plain error. NMI R. CIV. P. 51(d)(2).

IV. DISCUSSION

A. Bona Fide Purchaser

¶ 12 PRMC argues the jury's finding that Luan was a bona fide purchaser was not supported by substantial evidence. Substantial evidence is "such relevant evidence as reasonable minds might accept as adequate to support a conclusion." *Owens v. Commonwealth Health Ctr.*, 2012 MP 5 ¶ 8.

¶ 13 PRMC argues Luan was not a bona fide purchaser because the evidence demonstrates she had actual and constructive notice of tenants residing on the property. Opening Br. 10; Reply Br. 3. It argues that under 1 CMC § 3711(a), notice precludes bona fide purchaser status. PRMC claims that Luan failed to inquire with the tenants on the property,[5] which would have led her to PRMC's guaranteed option to extend the 1999 lease.

¶ 14 Under 1 CMC § 3705, the NMI is a race-notice jurisdiction. In pertinent part, the statute states:

> No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, shall be valid . . . [a]gainst any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded.
> 1 CMC § 3705(a).

In a race-notice jurisdiction, a bona fide purchaser ("BFP") is a purchaser who has superior rights to property over competing interests if it takes the property free of any unknown rights. *Hochstein v. Romero*, 268 Cal. Rptr. 202, 204 (Cal Ct. App. 1990). *Cf. Aldan v. Pangelinan*, 2011 MP 10 ¶ 13 (purchaser of trust

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[5] PRMC argues inquiry notice "imposes a duty upon the would-be purchaser to make inquiry of the tenants as to the nature and source of their interest, and charges the purchaser with knowledge of all that he might have learned had such an inquiry been made." Opening Br. 11.

property without notice will prevail over minor beneficiaries). But a buyer "who has notice that an unrecorded interest exists cannot be a bona fide purchaser in good faith." *Bear Island Water Ass'n v. Brown*, 874 P.2d 528, 536 (1994) (citing *Langroise v. Becker*, 526 P.2d 178, 180 (1974)). Whether a purchaser had notice is tested at the time the property was conveyed.

¶ 15 What constitutes "notice" under 1 CMC § 3705(a) is an issue of first impression. We look to similar race-notice jurisdictions for guidance on notice requirements for real property.[6] *See Commonwealth v. Lot No. 353 New G*, 2012 MP 6 ¶ 16 (holding we may consider the law of other jurisdictions as persuasive authority where there is no dispositive NMI authority).[7] In general, notice must be actual or constructive. *See Taitano v. Lujan*, 2005 Guam 26 ¶ 27; *Bear Island Water Ass'n v. Brown*, 874 P.2d 528, 536 (1994); *Gribble v. Mauerhan*, 10 Cal. Rptr. 296, 227-28 (Cal. Ct. App. 1961). Actual notice occurs when the interested buyer knows or is told of another's interest in the property. *Spence v. Spence*, 628 S.E.2d 869, 875 (S.C. 2006). Constructive notice may occur either when a document is recorded or from inquiry notice, which occurs when facts and circumstances regarding another person's interest require a person to inquire further. *Id.* at 876; *Pioneer Builders Co. of Nev. v. K.D.A. Co.*, 292 P.3d 672, 679 (Utah 2012). *See also FDIC v. Taylor*, 267 P.3d 949, 963–64 (Utah 2011) (recognizing actual and constructive notice, but including inquiry under the definition of constructive notice).

¶ 16 The Supreme Court of Utah evaluates inquiry notice using a two-step analysis. *Pioneer Builders Co. of Nev.*, 292 P.3d at 680. First, the court determines whether the subsequent buyer had actual knowledge at the time the property was purchased. *Id*. Second, the court evaluates whether certain facts and circumstances would lead a reasonable buyer to inquire. *Id*. A tenant's presence does not trigger a duty to inquire if the purchaser has reason to expect their presence. *Id.* In *Pioneer Builders Co. of Nevada*, the court reasoned that a duty to inquire was not imparted to a purchaser who had actual knowledge of the property's rental purpose and constructive knowledge of a deed. *Id.* at 681.

¶ 17 In this case, the jury was presented with written documents and witness testimony. Luan testified that when she signed the lease, Roligat informed her of PRMC's unrecorded lease. She therefore had actual notice of its existence. Ms.

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[6] 1 CMC § 3705 is derived from the Trust Territory Code. *See* 57 TTC § 302; *Asunuma v. Flores*, 1 TTR 458 (1958) (establishing a bona fide purchaser must purchase in good faith, without notice, and be the first to record the purchase). The verbiage was loosely adopted from other race-notice jurisdiction statutes. Our race-notice statute is thus worded similarly to other race-notice jurisdictions. *Cf.* IDAHO CODE ANN. § 55-812; CAL. CIV. CODE § 1214; HAW. REV. STAT. § 502–83.

[7] Idaho's statute, in particular, contains language similar to ours: "Every conveyance of real property other than a lease for a term not exceeding one (1) year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded." IDAHO CODE ANN. § 55-812.

Kintol testified that a second written lease between Tagabuel and PRMC did not exist on November 5, 2014. There was no testimony that Tagabuel informed Luan that Ng extended the lease. Tagabuel testified that Luan satisfied any obligation to inquire when Roligat's title report concluded that any leases attached to the property would cease on September 10, 2014.

¶ 18 PRMC's argument that Luan must have inquired with the tenants living at its apartment complex to satisfy inquiry notice is unpersuasive. Luan knew of the apartment complex through her co-worker, a tenant at the time. After learning that Tagabuel was looking for a buyer, Luan procured a title report, which showed no encumbrances on the property. There is no evidence of a prior discussion between Luan, Tagabuel, or Roligat which would put her on notice of an existing lease beyond September 10, 2014. As in *Pioneer Builders Co. of Nev.*, we find the tenants' presence did not impart a duty to inquire further for additional unrecorded leases. Because Luan was aware of the tenants' presence and the purpose of PRMC's rental complex, she need not inquire further. Thus, there was sufficient evidence for the jury to conclude that Luan did not have notice of PRMC's lease and therefore, she is a BFP.

¶ 19 PRMC argues the 1999 lease does not set a deadline on the option to extend, and Tagabuel waived any time limit. We find PRMC did not exercise the option to extend the lease before Luan attained BFP status. "The intent of contracting parties is generally presumed to be encompassed by the plain language of contract terms." *Manglona v. Baza*, 2012 MP 4 ¶ 12. An option in a contract is "an irrevocable offer by the offeror to perform." *Commercial Res. Group, LLC v. J.M. Smucker Co.*, 753 F.3d 790, 794 (2014) (quoting *Matrix Props. Corp. v. TAG Invs*., 609 N.W.2d 737, 742 (N.D. 2000)). Time is "of the essence" when exercising an option in a contact and a tenant must exercise an option to extend a lease before the lease expires. *Id.*; *See also Camacho v. L & T Int'l Corp.*, 4 NMI 323, 327 (1996).

¶ 20 Further, any agreement to lease real property for more than a year must be in writing under the statute of frauds. 2 CMC § 4912. In *190 Elm St. Realty, LLC v. Beaudoin*, the New Hampshire Supreme Court held that an option to extend does not violate the statute of frauds if the original lease explicitly lays out the terms of extension. 855 A.2d 546, 548 (N.H. 2004). There, the terms of the lease stated, "[a]t the expiration of this lease, Lessee reserves the right to extend for a period of five more years with a monthly fixed rent." *Id.* Prior to expiration, the plaintiff opted to exercise his right to extend and sent written notice to the defendant. *Id*. at 547. The court held that a separate agreement was not needed because the original lease satisfied the statute of frauds and no new terms were imposed. *Id*. at 548.

¶ 21 Here, the option to extend in the 1999 lease agreement is clear and unambiguous. The lease states the "term of the Lease shall be for a period of twelve (12) years . . . with [the] option to extend this Lease Agreement for another term as may be agreed upon by both parties." App. at 489. Unlike in *Beaudoin*, the 1999 lease does not explicitly guarantee PRMC a right to extend without both

parties' consent. Tagabuel admitted that Ng made piecemeal payments and communicated an intent to extend the lease for a second time, but that PRMC lacked sufficient funds to extend at the time the lease expired. Such piecemeal payments do not amount to an agreement, and thus PRMC never exercised its option to extend. Further, Tagabuel and Ng added thirty years to the second lease, an essential term not included in the 1999 lease. To conform with the statute of frauds, PRMC's lease needed to be in writing prior to Luan's lease. Thus, we find substantial evidence such that a reasonable jury could conclude that Luan is a BFP.

B. The Verdict Form

¶ 22 PRMC argues the award of $300,000 in punitive damages was inappropriate because the verdict form was ambiguous in that the jury could have awarded punitive damages for both the quiet title and trespass claims, rather than just for trespass. Opening Br. 14. The verdict form submitted to the jury, in pertinent part, read as follows:

> B. If you selected Li Fen Luan, answer the following:
> i. We award compensatory damages against PRMC for quiet title in the amount of _____. Please proceed to question III(B)(ii).
> ii. Do you find that PRMC is a trespasser?
> a. Yes: ____ No: ____
> b. If no, STOP HERE. THIS IS YOUR VERDICT.
> c. If yes, we award compensatory damages against PRMC in the amount of _____. Please proceed to Section III(B)(iii).
> iii. If you find PRMC engaged in the above acts or conduct with malice, evil motive, or with reckless indifference to the Luan's rights, you may award punitive damages to deter such conduct in the future.
> App. at 8.

PRMC argues that the verdict form does not specify whether the "acts or conduct" for which punitive damages could be awarded referred to the trespass claim or the quiet title claim. On the other hand, Luan argues PRMC's participation in drafting the form and its failure to object before submitting the case to the jury waived its right to appeal the issue. She argues the form only allowed punitive damages for trespass.

¶ 23 A reviewing court must respect a jury's findings, which are "entitled to a *high level of deference*." *See Commonwealth v. Castro*, 2007 MP 9 ¶ 11 (emphasis added). We review a jury's award of damages only "to ensure that we do not encroach upon the jury's functions." *Owens v. Commonwealth Health Ctr.*, 2012 MP 5 ¶ 8. Such an award is "supported by substantial evidence and should not be overturned so long as it 'could reasonably have been reached by the jury.'" *Id.*

¶ 24 Under NMI Rule of Civil Procedure 51, to sustain a challenge to a verdict form, the party must object before or after the close of evidence. NMI R. CIV. P. 51(a)(1). The court may grant a request to file issues that could not have reasonably been anticipated before the close of the evidence. NMI R. CIV. P. 51(a)(2). An untimely objection is considered waived on appeal. *See Motorola, Inc. v. J.B. Rogers Mech. Contractors*, 177 Fed. Appx. 754, 756 (9th Cir. 2006). But when the "court is aware of a party's concerns with an instruction, and further objection would be unavailing," an objection is not required and the issue may be brought on appeal. *Santos v. Nansay Micronesia, Inc*., 4 NMI 155, 165 (1994).

¶ 25 Absent a timely objection, the court may review for plain error if substantial rights are affected. NMI R. CIV. P. 51(d)(2). A party claiming plain error under Rule 51 "has the heavy burden of demonstrating fundamental injustice." *Garcia v. Wal-Mart Stores, Inc.*, 209 F.3d 1170, 1174 (10th Cir. 2000) (quoting *Medlock v. Ortho Biotech, Inc*., 164 F.3d 545, 553 (10th Cir. 1999)). An appellate court's discretion to correct errors under Rule 51 should only be invoked to prevent a miscarriage of justice. *C. B. v. City of Sonora*, 769 F.3d 1005, 1019 (9th Cir. 2014).

¶ 26 In *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, appellants claimed there were several errors built into the verdict form. 259 F.3d 1101, 1109 (9th Cir. 2001). There, the court drafted the verdict form because the parties could not reach a compromise. *Id.* Neither party objected when the district court asked if there were any objections before submitting it to the jury. *Id*. at 1110. During the three days of jury deliberation, the appellants never moved to amend the form. *Id*. The court found the parties' failure to object to the verdict form had therefore waived the challenge on appeal. *Id*. at 1110-11.

¶ 27 Similarly, here, PRMC and Luan drafted and reviewed the verdict form before it was submitted to the jury. Prior to closing arguments, the court went over the verdict form with the parties, and gave each side ample opportunity to review and discuss. The court stated, "Let's first go over the verdict. Any problems, Mr. Hill? Mr. Torres?" App. at 428. Neither party objected, and the court responded with "Fine. Thank you. All right, so we're satisfied with the verdict form." *Id.* At no time, before or after the close of evidence, did PRMC request to amend the form as required by Rule 51. Luan's counsel explained the verdict form to the jury, to which PRMC did not object. And there is no indication in the record that the court was aware of PRMC's claims of ambiguity in the form, obviating the application of Rule 51's exception. Therefore, by failing to object, PRMC waived the issue of ambiguity in the verdict form. We preserve the jury's verdict and find the court did not abuse its discretion in awarding punitive damages.

¶ 28 Because PRMC did not object to the verdict form, we may review for plain error. Plain error review requires determining whether: (1) there was error; (2) the error was plain or obvious; and (3) the error affected the appellant's substantial rights. *Commonwealth v. Reyes*, 2016 MP 3 ¶ 11; *Forrest v. Parry*, 930 F.3d 93, 113 (3rd Cir. 2019). Even if all prongs of this test are met, reversal

is only proper if it is "necessary to safeguard the integrity and reputation of the judicial process or to forestall a miscarriage of justice." *Commonwealth v. Hocog*, 2019 MP 5 ¶ 11. We find no error in the court's decision to maintain the punitive damages because the form could be read to award punitive damages solely for the trespass claim. Even if there was error, PRMC fails to demonstrate how the error was plain or how the error fundamentally affected its substantial rights. We likewise find no miscarriage of justice in the court's decision not to revise the verdict form sua sponte. Thus, we find no plain error.

V. CONCLUSION

¶ 29 We find sufficient evidence to support the jury's finding that Luan was a bona fide purchaser. The court did not abuse its discretion in denying PRMC's motion to amend the punitive damages because PRMC failed to timely object to the verdict form. For these reasons, we AFFIRM the Order.

SO ORDERED this 21st day of April, 2021.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLOÑA
Associate Justice

/s/
PERRY B. INOS
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