

APR 05 2017



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REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

<p>EIGIGU HOLDINGS CORPORATION,</p> <p>Plaintiff,</p> <p>v.</p> <p>LEANDER LEANDER and LIJUN LEANDER,</p> <p>Defendants.</p>	<p>CIVIL ACTION 2014-067</p> <p><b>ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT and NOTICE OF PRE-TRIAL CONFERENCE</b></p>
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On November 12, 2015, plaintiff filed a motion for declaratory judgment which counsel agreed to treat as a motion for summary judgment. On December 1, 2016, I gave counsel the opportunity to request oral argument; neither counsel did. On February 20, 2017, defendants filed an opposition to plaintiff's motion for summary judgment, and included their own motion for summary judgment. Plaintiff did not file an opposition to defendants' motion.

I have now thoroughly reviewed the file, the pleadings, the motions, the memoranda, the supporting declarations and documents, and the legal authorities cited by counsel.

I begin with several facts that are not genuinely in dispute and are therefore established in this case. *See* MIRCP 65(g). I next deny both motions for summary judgment, and as suggested by MIRCP 65(a), state my reasons for doing so. I then take the opportunity to address the purported \$200,000 payment. And finally, I schedule a pre-trial conference.

## ESTABLISHED FACTS

1. In 1990, several RMI land title holders (“landowners”) and the Nauru Local Government Council (“NLGC”) entered into a 50-year lease (“the master lease”) for 3.3763 acres in Remejon and Wotje wetos in Delap. The primary purpose of the master lease was for NLGC to complete the construction of, and to operate, the Eastern Gateway Hotel. NLGC was allowed to enter into subleases without landowners’ consent.

2. In June 1996, NLGC transferred its real property holdings and interests to plaintiff Eigigu Holdings Corporation (“EHC”).

3. In April 2001, NLGC entered into a 10-year sublease (“sublease”) with defendants (“Leanders”) for a portion of the Eastern Gateway Hotel building. NLGC/EHC agent Rubin Tsitsi (“Tsitsi”) signed the sublease on behalf of NLGC.

4. In September 2002, the Nauru Council<sup>1</sup> and Leanders agreed to extend the sublease through 2027. Tsitsi signed the agreement on behalf of the Nauru Council. The agreement required Leanders to pay \$200,000 up front as full rent for the extension period.

5. In July 2010, the Nauru Council and Leanders entered into a second extension of the sublease. The second extension extended the sublease from 2027 through February 2040. No additional rent was required for the additional 13 years. Tsitsi signed the agreement on behalf of the Nauru Council.

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<sup>1</sup> EHC claims that “Nauru Council” is a stranger to the master lease and sublease and had no authority to extend the sublease. I reach a contrary conclusion because Nauru Council and Nauru Local Government Council are used interchangeably in the sublease and in a July 16, 1996, letter from EHC to Tsitsi.

6. On July 9, 2010, Tsitsi signed a document stating that Leanders had paid a total of \$271,000 (including the one-time \$200,000 payment) as full rent from 2001 through 2040. EHC claims that it did not receive the \$200,000 payment.

7. Leanders entered into sub-subleases with other entities or individuals.

8. In February 2012, landowners demanded that NLGC and EHC cure several alleged breaches of the master lease. When the breaches were not timely cured, landowners terminated the master lease effective April 6, 2012.

9. On April 23, 2012, the Nauru Cabinet revoked Tsitsi's authority.

10. In May 2013, EHC and landowners entered into two written agreements. The first agreement: required EHC to pay approximately \$182,000 in damages to landowners over a 12-month period; required landowners, upon full payment of the \$182,000, to file a revocation of the termination of the master lease; and required EHC and landowners to sign the second agreement. The second agreement was entitled "2013 Amendment to the 1990 Lease Agreement for the Eastern Gateway Hotel." It states that it is an amendment to the master lease, and that EHC "desires to restore its relations with the Landowners and continue the original lease."

11. On September 6, 2013, EHC sent a letter to Eastern Gateway shop owners, managers and residents informing them of the "amended" lease between EHC and landowners.

12. In November 2013, EHC and landowners entered into a written Ground Lease Agreement ("the November 2013 agreement"). The November 2013 agreement includes several amendments to the master lease. Although it states that the termination of the master lease "terminated any existing subleases or subtenancies ... as a matter of law," it also recognizes that there may be "current and legally enforceable subleases on the premises."

### **DENIAL OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

In order to prevail, EHC must show that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law. EHC cited several appellate court decisions holding that, as a matter of law, the termination of a master lease results in the termination of any subleases. However, the facts in those cases are distinguishable because the terminations or surrenders of the master lease were final. There were no subsequent revocations of the termination, or restorations of the master lease, or continuations of the master lease, or amendments to the master lease. Although it may ultimately be determined that the April 2012 termination of the subject master lease was final, for the present, that material fact is genuinely disputed. Consequently, summary judgment is inappropriate and is denied.

### **DENIAL OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

In order to prevail, Leanders must show that there is no genuine dispute as to any material fact and that they are entitled to judgment as a matter of law. Leanders have not provided any legal authority supporting the proposition that the revival of a terminated master lease also revives the subleases. They have therefore failed, at least for the present, to show that they are entitled to judgment as a matter of law. Consequently, summary judgment is inappropriate and is denied.

### **THE \$200,000 PAYMENT**

I did not include the \$200,000 payment with the other established facts. That is not an oversight. I am not yet convinced, by a preponderance of the evidence, that the payment was made. EHC denies receiving it, the only evidence produced to date is the document signed by Tsitsi nearly eight years later, and Tsitsi's credibility is debatable.

**PRE-TRIAL CONFERENCE -- JUNE 14, 2017, at 9:00 a.m.**

Mr. Benjamin is in the process of shedding several RMI cases for personal reasons. Because of that, I have scheduled pre-trial conferences in three of his other cases for June 14, 2017, at 9:00 a.m.

**Counsel in this case shall appear for a pre-trial conference at that same date and time.** If Mr. Benjamin still represents EHC at that time, he may join the conference via telephone, Skype or Messenger. In order to do that, he shall contact the Court earlier that week to arrange and test the connection.

At the conference, counsel shall be prepared to schedule a trial date and all other pre-trial events.

DATED this 5th day of March, 2017.

BY THE COURT:



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COLIN R. WINCHESTER  
Associate Justice