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FILED

SEP 21 2018


ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT
REPUBLIC OF THE MARSHALL ISLANDS

EIGIGU HOLDING CORPORATION,

Plaintiff,

vs.

LEANDER LEANDER and LIJUN LEANDER

Defendants

Civil Action No. **2014-067 CRW**

DEFENDANTS' 2nd MOTION FOR
SUMMARY JUDGMENT; and
CERTIFICATE OF SERVICE

Comes now Defendants, by and through their attorney James McCaffrey, and hereby bring this 2nd Motion for Summary Judgment based on recent rulings of the Court and newly established undisputed facts.

Background

Plaintiff on 12 November 2015, through its then attorney Gordon Benjamin, filed a motion for a Declaratory Judgment against Defendants. As the motion dealt with facts in addition to law, the Court treated it as a Motion for Summary Judgment. Defendants responded to that motion on 20 February 2017 and also brought a Cross Motion for Summary Judgment. That Cross Motion and Defendant Leander Leander's supporting Declaration to that filing is incorporated herein by this reference.

On 5 March 2017 the Court denied both motions for summary judgment. The Court found and established 12 numbered paragraphs of facts for this case (pages 2-3 of the Order).

Since that time sworn statements given by Plaintiff's directors and other facts have been discovered.

Remaining Issues

As a result of recent rulings in this case and in related cases involving Plaintiffs, i.e. in CA 2016-247, -248, and -249, the issues have been clarified. In this case, two substantive issues remain:

- 1) Was Rubin Tsitsi an agent of Plaintiff EIGIGU HOLDING CORPORATION or its predecessor(s) in interest; and
- 2) Did Rubin Tsitsi receive the \$271,000 in payments from Defendants?

ARGUMENT

1. Rubin Tsitsi was the agent of Plaintiff and Plaintiff is bound by his actions

On 19 September 2013, in Civil Action 2013-005, *Eigugu Holdings Corporation v. Rubin Tsitsi*, Plaintiff filed "Petitioner's Motion for Eviction; Memorandum of Support; Affidavit of David Aingimea."

In the Affidavit of David Aingimea¹, Executive Chairman of Eigugu Holding Corporation ("EHC") of 19 September 2013, Mr Aingimea states:

"4. Mr. Rubin Tsitsi was an employee of EHC and before EHC, NLGC..."

¹ David Aingimea is included on Plaintiff's [Trial] Witness List filed on 4 September 2018.

Other evidence that supports this fact are Mr. Tsitsi's 28 June 1993 appointment letter by Nauru Local Government Council contained in Plaintiff's and Defendants' trial exhibits, a 27 November 1998 authorization, his termination as a representative on 13 July 2012 by Nauru, and so on. In addition, Mr. Tsitsi's signature is on numerous leases and subleases showing that he acted as an agent of Nauru/EHC.

It is hornbook law that a Principal (Plaintiff EHC) is responsible for the action of its agent (Mr. Rubin Tsitsi).

2. The \$271,000 in payments is established by Plaintiff's Verified Complaint

a. By Judicial Admission

Plaintiff's "Verified Complaint for Declaration of Terminated and Invalid Sub-lease and Eviction" of 7 April 2014 states:

"13. At or around the time of the signing of the 2002 'sub-lease', in September 2002, Defendants paid Mr. Rubin Tsitsi \$200,000 in advance for full payment for thirty-three years, for an average of \$6,060 per year."

This paragraph is a judicial admission and as such conclusively established that there was such a payment by Defendants.

[U]nder federal law, stipulations and admissions in the pleadings are generally binding on the parties and the Court. Not only are such admissions and stipulations binding before the trial court, but they are binding on appeal as well." *Ferguson v. Neighborhood Housing Services.*, 780 F.2d 549, 551 (6th Cir. 1986) (citations omitted). "Judicial admissions are formal admissions in the pleadings which have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *In re Fordson Engineering Corp.*, 25 B.R. 506, 509 (Bankr.E.D. Mich. 1982). Factual assertions in pleadings and pretrial orders, unless amended, are considered judicial admissions conclusively binding on the party who made them. See *White v. Arco/Polymers, Inc.*, 720 F.2d 1391, 1396 (5th

Cir. 1983); Fordson, 25 B.R. at 509, *American Title Ins. Co. v. Lacelaw Corp.* (9th Cir. 1988), 861 F.2d 224, 226

A statement in a **complaint**, answer or pretrial order is a judicial admission, as is a failure in an answer to deny an allegation, *American Title* at 226. [emphasis added]

To be treated as a judicial admission, a statement must be:

- 1) made in a judicial proceeding;
- 2) contrary to a fact essential to the theory of recovery; and
- 3) deliberate, clear, and unequivocal;
- 4) such that giving it conclusive effect meets with public policy; and
- 5) about a fact on which a judgment for the opposing party may be based.

Heritage Bank v. Redcom Laboratories, Inc., (5th Cir. 2001), 250 F.3d 319, 329.

The statement was made in the Verified Complaint that opened this matter and it meets all the criteria enumerated above.

b. By Sworn Statement

Paragraph A above describes the determinative effect of a judicial admission in an unverified complaint. The payments are conclusively established – and can not be now denied by Plaintiff -- as the complaint was Verified and sworn to:

Verification of Complaint

I, Vyko Adeang², a Board Member of Eigigu Holdings Corporation, having been sworn, affirm under oath that I have read this ““Verified Complaint for Declaration of Terminated and Invalid Sub-lease and Eviction”, and that its contents are true and correct. Done this 7th day of April, 2014.

/s/ signed indiscernible [before an Asst. Clerk of Court] [RMI High Court Seal]

² Vyko Adeang is included on Plaintiff's [Trial] Witness List filed on 4 September 2018.

c. Other Supporting Evidence

The Court is well aware of the notarized receipt given by Plaintiff's agent, Mr Rubin Tsitsi, dated 9 July 2010. At the outset of these proceedings for Defendants, it was included as Exhibit B to the Affidavit of Defendant Leander Leander in Support of His Motion for Relief from Entry of Default filed 10 November 2014. Mr. Leander also stated in his Affidavit at paragraph 9, "No rent is due at this time and all rent has been fully paid."

3. The Master Lease was restored by contract between Landowners and Plaintiff

By its terms, the 20 November 2013 Agreement between Landowners and EHC revoked the termination of the Master Lease. It provided:

"4. Upon receipt of the full payment of damages, as referenced above, the Landowners shall file with the Land Registered Authority a revocation of the Termination of the 1990 Eastern Gateway Lease on Remejon and Wotje Wetos."

Shortly thereafter, but still in November of 2013, the Landowners and EHC amended the Original Lease, recognizing its continued existence. It provided:

"7. SECTION 10 of the Original Lease is amended and replaced to read as follows:

Subletting and Assignment. Following the expiration of any current and legally enforceable sublease on the premises, if any, Tenant [EHC] may sublease or assign the premises in whole or part..."

Thus, by contract, the Master Lease was restored (assuming it was ever terminated) along with its subleases.

4. Estoppel by Deed prevents Plaintiff enjoying the Master Lease, denying the Sublease

The common law doctrine of “Estoppel by Deed” automatically restored the subleases when EHC reacquired the Master Lease *regardless* of whether this was by Master Lease restoration or by entering into a new Master Lease.

The common law doctrine of Estoppel by Deed is explained in this seminal Pennsylvania Supreme Court case involving leases, *Shedden v Anadarko Company*, available at

<https://caselaw.findlaw.com/pa-supreme-court/1730543.html>

The Court explained that in Pennsylvania, [the] doctrine of estoppel by deed precludes one who leases property which he does not own, but of which he later acquires ownership, from denying the lease on the basis he did not have ownership at the time the lease was executed.

Further, “when a vendor or mortgagor either sells or mortgages land which he does not own, and afterwards acquires title thereto, he is not permitted to set up this after-acquired title to defeat his previous grant or mortgage, for this would permit him to perpetrate a fraud upon his grantee or creditor.”; *Daley v. Hornbaker*, 325 Pa.Super. 172, 472 A.2d 703, 705 (Pa.Super.1984) (“A grantor is estopped to assert anything in derogation of his deed, as against grantee.”).

Conclusion

At the final pre-trial hearing there were only two factual issues remaining to be tried. They can now be resolved by Summary Judgment without the waste of time and expense of a trial.

It can not be reasonably disputed that Mr. Rubin Tsitsi was an employee and agent of EHC/Nauru. They are bound by his actions, inactions, and misdeeds, if any.

In a sworn statement by Vyko Adeang, a Board Member of Eigigu Holdings Corporation, stated: “At or around the time of the signing of the 2002 'sub-lease', in September 2002, Defendants paid Mr. Rubin Tsitsi \$200,000 in advance for full payment for thirty-three years, for an average of

\$6,060 per year." Mr. Tsitsi was Plaintiff's agent thus they are considered to have received this rent whether or not Mr. Tsitsi passed it on or not.

Landowners and EHC revoked the termination of the 1990 Eastern Gateway lease, amended this Original Lease, and provided for the subleases. Either by this contract or by operation of law, Plaintiff is prevented or estopped from denying its subleases.

Request for Relief

Defendants ask that the Court enter Summary Judgment in their favor, dismissing this matter with prejudice and declaring their Leases with Plaintiff, and any amendments thereto, to be in full force and effect.

Dated: 20 September 2018
Baja California

By: _____

James McCaffrey, Attorney for Defendants



Digitally signed by James McCaffrey
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Firm, ou,
email=James@McCaffreyFirm.com,
c=MH
Date: 2018.09.20 17:35:24 -07'00'

Civil Action No. 2014-067, EIGIGU HOLDINGS CORP v. LEANDER

METHOD OF FILING

The foregoing

DEFENDANTS' 2nd MOTION FOR SUMMARY JUDGMENT

was filed with the High Court in Majuro on the date below-written.

CERTIFICATE OF SERVICE

I hereby certify that an exact duplicate of the document(s) filed above was duly served upon the below-named person(s) on the date below written by sending them a copy

(X) by Email to the email address opposite their name:

Divine F. Waiti
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Counsel for Plaintiff EIGIGU HOLDINGS CORP.

djwaiti@gmail.com

Dated: 20 September 2018
Baja California

/s/ James McCaffrey
JAMES McCAFFREY
Attorney for Defendants LEANDER