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ASST. CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS  
MAJURO ATOLL

EIGIGU HOLDINGS CORPORATION	)	Civil Action no. 2014 – 067
	)	
Plaintiff	)	
	)	PLAINTIFF’S OPPOSITION TO
-V-	)	DEFENDANT’S MOTION FOR
	)	SUMMARY JUDGMENT
LEANDER LEANDER and LIJUN LEANDER,	)	
Defendants	)	
_____		)

Comes now, Plaintiff by and through counsel Divine F. Waiti, and hereby opposes the Defendant’s 2<sup>nd</sup> Motion for Summary Judgment filed on September 20, 2018.

BACKGROUND

On March 5, 2017, the Court denied both Plaintiff and Defendants motions for summary judgment stated that there are triable issues to consider on trial.

On June 25, 2018, the Plaintiff moved it’s 2<sup>nd</sup> Motion for Summary judgments seeking judgments on the same grounds that the Defendant now seeking the court to grant judgment. The court denied the motion stating that there are “several genuinely disputed facts” that needs to be tried in court. The Plaintiff asserts there remain genuine disputed facts that need to be tried in court.

## ARGUMENTS

The Defendant moves for the same grounds, seeking that (i) Rubin Tsitsi was the agent of Plaintiff and Plaintiff is bound by his actions, (ii) the \$271,000 was paid and is verified in the Verified Complaint, (iii) The Master Lease was restored by contract between Leander and Plaintiff, (iv) Estoppel by Deed prevents Plaintiff prevents the Plaintiff from enjoying the Master Lease, denying the subleases. The Plaintiff in it's responses argues otherwise as follows to these issues:

- (i) Rubin Tsitsi was not the agent of Plaintiff and Plaintiff is not bound by his actions.***

The June 28, 1993 was not an appointment letter, it was a letter made pursuant to the meeting of the Nauru Local Government Council, of which Mr Francis Garoa, the Finance Officer, wrote to the Acting Chairman, recommended the appointment of Mr. Rubin Tsitsi (See Plaintiff's *Exhibit P-3*).

There is an absence of the formal appointment of Mr. Rubin Tsitsi. Plaintiff submits that it remains a factual issue whether or not effective authority was granted to act on behalf of EHC and if there was formal appointment, what kind of authority was given to Mr. Tsitsi to act on behalf of EHC. Furthermore, without knowing the scope of the authority, was Mr. Tsitsi has far going beyond his capacity and personally benefitting for his own gain.

On June 27, 1996, it was clear that NLGC was dissolved; all properties were vested in the Republic of Nauru in accordance with the Cabinet Minute. The Minute states that "all properties of the former Nauru Local Government Council shall vest in the Republic with immediate effect". The Minute further states that " upon the incorporation of Eigigu Holdings Corporation, the Republic Transfers to Eigigu Holding Corporations all the properties of the

former Nauru Local Government Council”. The EHC was incorporated in June 26, 1996 (See Plaintiff’s *Exhibit P-6*, attached)

A letter dated July 16, 1996, faxed to Mr. Tsitsi, as the NLGC Representative, informed Mr. Tsitsi of the dissolution of NLGC, and notified him of the awaiting transfer of NLGC properties to EHC (Plaintiff’s *Exhibit P-4*) – Mr. Tsitsi was aware and knowledge about the dissolution, yet he entered into lease on behalf of Nauru Council with the Leanders. The fact that Mr. Tsitsi entered into the contract on behalf of a defunct entity, would that entail the lease agreement valid, and would EHC responsible for an agreement that is not entered under it’s name?

When the articles of a corporation are canceled, the authority of the corporation to do business ceases and after such termination, officers who carry on new business do so as individuals are personally responsible for such obligations as they incur. (*Chatman v. Day* (1982), 7 Ohio App. 3d 281, 282). Should the Plaintiff be responsible for personal liability of Mr. Tsitsi?

Even with David Aingimea’s letter stating that Mr. Robin was an employee of EHC and Mr. Tsitsi’s letter of termination on July 13, 2012, was made in the absence of clear identify authority that is granted to Mr. Tsitsi.

***(ii) the \$271,000 was not paid and the verification must be read in line with other paragraphs in the Complaint and other documents.***

Paragrah 13 of the complaint may have some drafting issues and should not be read alone but together with Paragraph 16 of the complaint, which states that plaintiff has no record of receiving any of the proceeds of the advance payment for the 2002 “sub-lease” made by

Defendants to Mr. Rubin Tsitsi. The plaintiff denied receiving any payments with the lack of evidence to show that.

In Defendant's Exhibit D-13, Mr. Tsitsi allegedly stated that he received the amount of \$271,000 from the Leanders presumably in 2010, which includes payment made in 2002. In reading between the lines of the July 9, 2010 statement of receipt, Mr. Tsitsi alleged acknowledge the receipt of the payment after 8 years. Defendant stated that they have operated on cash basis, if they do, why they produce similar to exhibits D-16 to show for the payment of \$200,000 was made to Rubin Tsitsi.

***(iii) The Master Lease was not restored by contract between Leander and Plaintiff.***

Plaintiff's maintained that Mr. Tsitsi who married to Marshallese and living with wife and children on the Eastern Gateway after the dissolution of NLGC, had entered into lease agreements and benefiting from those proceeds. He did not pay rents to the landowners, which resulted in the landowners sued EHC.

The landowners terminated the master lease in May 2012. Later, the Plaintiff entered two written agreements with the landowners, (i) to pay about \$182,000 in damages to the landowners, (ii) termination of the 1990 Lease Agreement. The Lease was not restored by contract between Leander and Plaintiff

One of the reasons for which the landowners wanted to terminate the lease was due to the nuisance and illegal activities that occurred on the premises under the Defendant leases. The Plaintiff and landowners were not able to cure the nuisance and illegal activities occurring on the premises.

According to paragraph 6 of the 2002 Lease to Defendant Leander Leander, specifically and clearly states that the “lessee shall not commit, or suffer to be committed, any unlawful, disreputable, or ultrahazardous business purposes, nor operate or conduct its business in a manner constituting a nuisance of any kind” (para.6).

There were supporting evidence from the Joint Affidavit of James Keppa and Jamaica Adeang who describes an instance of exchanges for prostitution. A video interviewing one of the former sex worker evidenced that prostitution occurs on the lease premises. Plaintiff asserts that one of the reasons for the termination of the sublease is the existence of illicit of sexual activity occurring on the premises. See Affidavit of Yolanda Lodge-Ned and Emlin Samuel.

***(iv) Estoppel by Deed does not prevents Plaintiff prevents the Plaintiff from enjoying the terms of the new lease; no evidence of fraudulent.***

In the application of the common law doctrine of estoppels by deed, it applies that whre a “vendor or mortgagor either sells mortgage land which he does not own, and afterwards acquire title, he or she is not permitted to set up this afterwards to defeat his previous grants or mortgage, for this would permit him to perpetrate a fraud upon his grantee or creditor..” *Shedden v. Anadarko Company*, citing *Daley v. Hornbaker*, 325 Pa.Super. 12,472 A.2d 703, 705.

Plaintiff submits that there are no evidence of fraud which shows that the plaintiff has reacquired the property by defrauding the Defendants for his own advantage. There are clear evidence that can be put in trial the Defendant has been benefitting tremendously from these leases and the Plaintiff has been struggling to make the payments to the landowners and have not in any shape or form defrauded the Defendants. Thus, the Defendants has been and continue to

violate the terms of the lease by allowing nuisance and illegal activities to happen on the premises.

### CONCLUSSION

In conclusion, there are factual issues still remain to be tried. (i) There was still remain to know and hear the kind of employee relationship that Mr. Tsitsi was employed to do when sent to the Marshall Islands, whether or not effective authority was granted and what kind? (ii) The termination of the principal 1990 lease was lawful by the landowners and Plaintiffs have decided to re-enter a new lease and made the necessary payment to cure the damages to the previous lease. (iii) the Plaintiff has made it in good faith and has not defrauded the Defendants or taking an unjust enrichment to benefit from Defendant's concerning the lease agreements.

The plaintiff and landowners however could not cure other issues in relation to the nuisance and illegal activities on the premises, and therefore seek that Defendant sublease be terminated for violation of the terms of the sublease.

Respectfully Submitted,

Date: September 27, 2018



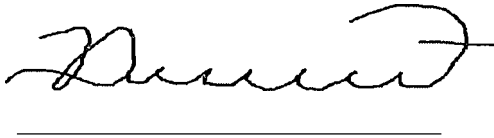
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Divine F. Waiti – counsel for Plaintiff

CERTIFICATE OF SERVICE

I, Divine F. Waiti, hereby certified that I will serve a copy of Plaintiff's Motion for Partial Judgment on Defendants Counsel James McCaffrey, by emailing the copy of the same to his email address: James@McCaffreyFirm.com .

Dated: September 27, 2018



A handwritten signature in black ink, appearing to read 'Divine F. Waiti', is written above a solid horizontal line.

Divine F. Waiti