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REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

EIGIGU HOLDINGS CORPORATION,  Plaintiff,  v.  LEANDER LEANDER and LIJUN LEANDER,  Defendants.	CIVIL ACTION 2014-067  <b>FINDINGS OF FACT AND CONCLUSIONS OF LAW</b>
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Divine Waiti, counsel for plaintiff  
James McCaffrey, counsel for defendants

*The following findings of fact are established and cannot be changed. The following conclusions of law constitute the law of the case and cannot be changed.*

**FINDINGS OF FACT**

1. From approximately June 1993 through June 1996, Rubin Tsitsi (“Tsitsi”) was the authorized agent of Nauru Local Government Council (“NLGC”).<sup>1</sup>
2. From June 1996 through April 23, 2012, Tsitsi was the authorized agent of plaintiff Eigigu Holdings Corporation (“EHC”).

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<sup>1</sup> In some documents, NLGC is referred to by the shortened name “Nauru Council.” NLGC and Nauru Council are one and the same. For consistency, I use NLGC, and not Nauru Council, in this document.

3. In 1990, several RMI land title holders (“landowners”) and 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.

4. In June 1996, NLGC transferred its real property holdings and interests to EHC.

5. In April 2001, NLGC entered into a 10-year sublease (“the first sublease”) with defendants Leander Leander and Lijun Leander (“Leanders”) for a portion of the Eastern Gateway Hotel building (“the premises”). Tsitsi signed the sublease as agent for NLGC.

6. In September 2002, NLGC and Leanders entered into a second sublease. The second sublease replaced the first sublease and extended the lease period through September 2035. Tsitsi signed the second sublease as agent for NLGC. Leanders paid \$200,000 in advance as full rent through September 2035.

7. In July 2010, NLGC and Leanders entered into a third sublease. The third sublease replaced the second sublease and extended the lease period through February 2040. Tsitsi signed the third sublease as agent for NLGC. Leanders paid \$271,000 (including the \$200,000 paid previously) in advance as full rent through February 2040. This third sublease is still in effect.

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

9. 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.

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

11. 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."

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."

### **CONCLUSIONS OF LAW**

1. From approximately June 1993 through April 23, 2012, Tsitsi was the authorized agent of first NLGC and then EHC.

2. The parties' third sublease is the sublease by which the resolution of this matter must be determined.

3. Landowners' April 2012 termination of the master lease did not result in the termination of any subleases because the November 2013 agreement between EHC and landowners restored or revived the 1990 master lease and any and all subleases.

4. 24 MIRC §438 does not make any of the three subleases void. The purpose of Section 438 is to protect customary land title holders who ascend during the term of a lease, and not to protect corporate lessors who remain throughout the term of a lease. When a contract involves private parties and not a public interest, the parties may, as between themselves, waive statutory requirements or statutory prohibitions. In addition, Section 438(2) does not state that the *lease* is void if offending advance payments are made. It states only that offending *payments* are void as against specified individuals.

DATED this 12th day of October, 2018.

BY THE COURT:



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COLIN R. WINCHESTER  
Associate Justice



Colin Winchester &lt;colinwinchester5862@gmail.com&gt;

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**Eigigu v Leander - Proposed Findings of Fact and Conclusions**6 messages

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Colin Winchester &lt;colinwinchester5862@gmail.com&gt;

Thu, Oct 11, 2018 at 11:52 AM

To: Divine Waiti &lt;djwaiti@gmail.com&gt;, James McCaffrey &lt;james@mccaffreyfirm.com&gt;

Bcc: Colin Winchester &lt;colinwinchester5862@gmail.com&gt;

Counsel:

Please review the following proposed findings of fact and conclusions of law. If you find any errors, or if you wish to suggest modifications or additions, please respond to THIS email address as soon as possible. Do not use the judiciary's email account because I will not be looking there for your suggestions.

I intend to finalize this project on Friday, October 12, so your ASAP response is appreciated. Thank you.  
Judge Winchester

**The following findings of fact are established and cannot be changed. The following conclusions of law constitute the law of the case and cannot be changed.**

**FINDINGS OF FACT**

- 1. From approximately June 1993 through June 1996, Rubin Tsitsi ("Tsitsi") was the authorized agent of Nauru Local Government Council ("NLGC").<sup>1</sup>**
- 2. From June 1996 through April 23, 2012, Tsitsi was the authorized agent of plaintiff Eigigu Holdings Corporation ("EHC").**
- 3. In 1990, several RMI land title holders ("landowners") and 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.**
- 4. In June 1996, NLGC transferred its real property holdings and interests to EHC.**
- 5. In April 2001, NLGC entered into a 10-year sublease ("the first sublease") with defendants Leander Leander and Lijun Leander ("Leanders") for a portion of the Eastern Gateway Hotel building ("the premises"). Tsitsi signed the sublease as agent for NLGC.**
- 6. In September 2002, NLGC and Leanders entered into a second sublease. The second sublease replaced the first sublease and extended the lease period through September 2035. Tsitsi signed the second sublease as agent for NLGC. Leanders paid \$200,000 in advance as full rent through September 2035.**
- 7. In July 2010, NLGC and Leanders entered into a third sublease. The third sublease replaced the second sublease and extended the lease period through February 2040. Tsitsi signed the third sublease as agent for NLGC. Leanders paid \$271,000 (including the \$200,000 paid previously) in advance as full rent through February 2040. This third sublease is still in effect.**
- 8. Leanders entered into sub-subleases with other entities or individuals.**
- 9. 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.**

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

**11. 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."**

**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."**

#### CONCLUSIONS OF LAW

**1. From approximately June 1993 through April 23, 2012, Tsitsi was the authorized agent of first NLGC and then EHC.**

**2. The parties' third sublease is the sublease by which the resolution of this matter must be determined.**

**3. Landowners' April 2012 termination of the master lease did not result in the termination of any subleases because the November 2013 agreement between EHC and landowners restored or revived the 1990 master lease and any and all subleases.**

END

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**Colin R. Winchester**  
Associate Justice  
High Court  
Republic of the Marshall Islands

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**Colin Winchester** <colinwinchester5862@gmail.com>  
To: marsollawyers@gmail.com, James McCaffrey <james@mccaffreyfirm.com>

Thu, Oct 11, 2018 at 11:55 AM

[Quoted text hidden]

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**James McCaffrey** <James@mccaffreyfirm.com>  
To: Colin Winchester <colinwinchester5862@gmail.com>, marsollawyers@gmail.com  
Cc: Divine waiti <djwaiti@gmail.com>

Thu, Oct 11, 2018 at 4:02 PM

Dear Judge Winchester:

I concur with the proposed findings of fact and conclusions of law and have no modifications or additions.

Please excuse my delay in replying. I have twice lost Internet today and I only saw this email a few moments ago.

Regards,

James McCaffrey

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**From:** Colin Winchester [mailto:colinwinchester5862@gmail.com]  
**Sent:** Thursday, October 11, 2018 11:56 AM  
**To:** marsollawyers@gmail.com; James McCaffrey  
**Subject:** Fwd: Eigigu v Leander - Proposed Findings of Fact and Conclusions

[Quoted text hidden]



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**Divine Waiti** <marsollawyers@gmail.com>  
To: colinwinchester5862@gmail.com  
Cc: james@mccaffreyfirm.com

Fri, Oct 12, 2018 at 5:43 AM

Judge Winchester,

It seems that what had been discussed on Wednesday is covered. I would just like if you could mention that the Plaintiff has amended the complaint and that the issue of nuisance and waste is to be determined in the later course.

Regards,

[Quoted text hidden]

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Divine F. Waiti  
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Marsol Lawyers & Consultants  
P O Box 3897 MH 96960  
Ace One Stop - 2nd Floor  
Ph: +692 455 3575  
www.marsollawyers.com

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**James McCaffrey** <James@mccaffreyfirm.com>  
To: Divine Waiti <marsollawyers@gmail.com>, colinwinchester5862@gmail.com

Fri, Oct 12, 2018 at 8:47 AM

I would note that these are the only claims remaining to be tried.

Jim

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**From:** Divine Waiti [mailto:marsollawyers@gmail.com]  
**Sent:** Friday, October 12, 2018 5:44 AM  
**To:** colinwinchester5862@gmail.com  
**Cc:** james@mccaffreyfirm.com  
**Subject:** Re: Eigigu v Leander - Proposed Findings of Fact and Conclusions

[Quoted text hidden]



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**Colin Winchester** <colinwinchester5862@gmail.com>  
To: James McCaffrey <James@mccaffreyfirm.com>  
Cc: marsollawyers@gmail.com

Fri, Oct 12, 2018 at 10:05 AM

Counsel:

My purpose in preparing the findings of fact and conclusions of law was to identify the facts and legal issues that have already been decided. It was not, and is not, to identify the facts and legal issues still remaining. I have no way of knowing if one or both of you will yet come up with a previously undiscovered issue or locate some critical fact that we have not yet discussed and resolved. I will therefore sign and distribute the document as written. Watch or it to come to you from the clerk later today. Thank you.

[Quoted text hidden]



IN THE HIGH COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

Eigigu Holdings Corporation )  
Plaintiff )  
v )  
Leander Leander and Lijun Leander )  
Defendant )  
\_\_\_\_\_ )

Civil Case No. 2014-067

**CERTIFICATE OF SERVICE**

I, Tanya Lomae, Asst. Clerk of the Courts, hereby certify that on 10/12/18

I served the Findings Of Fact And Conclusions of Law

filed 10/12/2018 in the above captioned matter on:

1. Divine Waiti by  Email  Fax  Personal Hand Delivery
2. James McCaffrey by  Email  Fax  Personal Hand Delivery
3. \_\_\_\_\_ by  Email  Fax  Personal Hand Delivery
4. \_\_\_\_\_ by  Email  Fax  Personal Hand Delivery

Attached is a copy of my  Sent Email /  Fax Confirmation.

\_\_\_\_\_  
Tanya Lomae  
\_\_\_\_\_  
Asst. Clerk of the Courts  
Marshall Islands Judiciary

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OCT 12 2018

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