

FILED

MAR 09 2020

ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT
of the
REPUBLIC OF THE MARSHALL ISLANDS

<p>CUI CHENGRI and GOLD COAST INTERNATIONAL,</p> <p> plaintiffs,</p> <p> v.</p> <p>ERKI KIOS, KILA KIOS, KATHY CHEN dba FISH GIFT SEAFOOD COMPANY,</p> <p> defendants.</p>	<p>CIVIL ACTION NO. 2018-029</p> <p> FINAL JUDGMENT</p>
---	---

I. INTRODUCTION AND SUMMARY CONCLUSION

This case involves competing land leases. Plaintiffs Cui Chengri ("Cui") and Gold Coast International (together "plaintiffs") claim that they leased from the customary landowners a portion of Lomajurok Weto, Majuro Atoll, Republic of the Marshall Islands, under two leases. The first lease was signed in 2015 and the second lease, a superseding lease, signed in 2016. The 2015 lease was signed by defendant Kila Kios ("Kila") on behalf of her mother, defendant Leroij Erki Kios ("Leroij Kios"), as the Iroij, the Alap, and the Senior Dri Jerbal. The 2016 lease was signed by Leroij Kios, as the Iroij, the Alap, and the Senior Dri Jerbal. With respect to the 2015 lease, the plaintiffs paid Kila \$10,000 in rent (\$1,000 for the first year of an initial 50-year term, commencing September 2015, and the balance as advance rent). With respect to the 2016 lease,

the plaintiffs paid Kila an additional \$3,800 in rent for the second year of an initial 51-year term commencing September 1, 2015.

In 2017, defendant Kathy Chen, dba Fish Gift Seafood Company ("Chen"), leased from the customary landowners a portion of Lomajurok Wetu under a lease signed by the following: Leroj Kios, as the Iroj; Dolores Jacklick for her mother Sally Jacklick, as the Alap; and Dolores Jacklick, as the Senior Dri Jerbal. The land Chen leased was a smaller part of the land the plaintiffs claimed they leased. Chen cleared the land and constructed improvements on it.

The plaintiffs seek an order declaring that their 2016 lease is valid, that Chen's 2017 lease is invalid, and that Chen must vacate the land and remove her improvements. In the alternative, the plaintiffs seek an order awarding them compensatory damages and punitive damages against Leroj Kios and Kila.

Based upon the Court's file, the evidence taken, the credibility of the witnesses, and counsel's submissions, the Court concludes that the plaintiffs' leases are void, that defendant Chen's lease is valid, and that defendant Kila is liable to the plaintiffs for \$13,800 in compensatory damages and \$41,400 in punitive damages.

II. FACTUAL BACKGROUND

This litigation arises from four leases and the plaintiffs' payment of money to defendant Kila.

A. The Four Leases and the Landowners

1. Pltfs' August 2015 Lease

In their Verified Complaint, filed February 7, 2018 ("Complaint"), the plaintiffs initially alleged that they leased a portion of *Lomajurok Wetu*, Majuro Atoll, Republic of the Marshall

Islands, under their purported "Ground Lease Agreement for a Portion of *Lojaurok* Weto, Ajeltake, Majuro Atoll," dated August 28, 2015 ("Pltfs' August 2015 Lease"). Complaint, ¶ 8, (emphasis added), Exhibit P-1. The plaintiffs registered their lease with the Land Registration Authority ("LRA") on December 15, 2015, as an eight-page document, Instrument No. 4769. The initial term of the lease was 50 years commencing September 1, 2015. The rent was \$1,000 per year.

The Pltfs' August 2015 Lease is notable for two things: (i) the lease states that it is a lease for a portion of *Lojaurok* Weto, instead of *Lomajurok* Weto; and (2) Kila signed for the landowners on behalf of her mother as the Iroij, the Alap, and the Senior Dri Jerbal.

2. Chen's May 2017 Lease

Also in their Complaint, the plaintiffs alleged that defendant Chen leased a portion of their leased premises under her "Ground Lease Agreement in Respect to a Portion of *Lomajurok* Weto," dated May 10, 2017 ("Chen's May 2017 Lease"). Complaint, ¶ 14, Exhibit P-6. Defendant Chen, registered her lease with the Land Registration Authority ("LRA") on May 9, 2017, as a 15-page document, Instrument No. 5001. Notably, Chen's May 2017 Lease was signed on behalf of the customary landowners by Leroij Erki Kios, as the Iroij, by Dolores Jacklick for her mother Sally Jacklick, as the Alap, and by Dolores Jacklick, as the Senior Dri Jerbal. The initial term of the lease is 30 years commencing May 10, 2017. The rent is \$6,000 per year.

3. Pltfs' August 2016 Lease

Just eight days after filing their Complaint, the plaintiffs filed their First Amended Complaint ("FAC") on February 15, 2018. In their FAC, the plaintiffs alleged that they leased

from the customary landowners a portion of *Lomajurok Weto* under their "Ground Lease Agreement for a Portion of *Lojaurok Weto*, Ajeltake, Majuro Atoll," signed August 11, 2016, a superseding lease ("Pltfs' August 2016 Lease").¹ FAC, Exhibit P-6. The lease, a 5-page lease without a legal description or a survey map, was registered with the Land Registration Authority ("LRA") on September 7, 2016, as Instrument No. 4879. The initial term of the lease was 51 years commencing September 1, 2015. The rent was \$1,000 per year for the first year and \$4,800 per year thereafter.

The Pltfs' August 2016 Lease is notable for two things. First, Leroij Kios signed the Pltfs' August 2016 Lease not only as the Iroij, but also as the Alap and the Senior Dri Jerbal, which she was not. Second, attached to their FAC, the plaintiffs filed the Pltfs' August 2016 Lease as a nine-paged document. The plaintiffs added four survey maps for *Lomajurok Weto*. Those four survey maps were not part of LRA Instrument No. 4879. In fact, one of the maps was marked as a page of LRA Instrument No. 2769. The four survey maps appear not to be part of the lease.

Additionally, the plaintiffs attached to their FAC an incomplete copy of Chen's May 2017 Lease. The plaintiffs attached to their FAC, as Exhibit P-8, a copy of the first 11 of 15 pages of Chen's May 2017 Lease. They omitted pages 12-15. The omitted pages included notarized signatures of the parties, a legal description, and a survey map.²

¹The plaintiffs changed the exhibit number for Chen's May 2017 Lease to "Exhibit P-8."

²The plaintiffs' counsel's use of falsified leases is evidence of either incompetence or a fraud upon the Court. Neither one is acceptable under the American Bar Association Model Rules of Professional Conduct, applicable in the Republic. *See* Rule 1.1 and Rule 3.3.

4. Leon July 1991 Lease

At trial, the plaintiffs offered into evidence, as Plaintiff's Exhibit P-9, a "Lease Agreement 1991 in Respect of Lomajurok Weto, Majuro, Marshall Islands," between Sam F. Leon and Nerita Jacklick, as the lessees, and Leroij Neira Moses, Alap Sally J. Jacklick, and Riberbal Crimson Hosa, as the lessors for the landowners ("Leon July 1991 Lease"). This was an expiring lease.

5. Landowners

When the Pltfs' August 2015 Lease and the Pltfs' August 2016 Lease were signed, the Iroj, Alap, and Senior Dri Jerbal of Lomajurok were the following: Leroij Kios, Alap Sally Jacklick, and Senior Dri Jerbal Dolores Jacklick. Alap Sally Jacklick and Senior Dri Jerbal Dolores Jacklick did not sign the plaintiffs' two leases. There was no evidence that Sally Jacklick or Dolores Jacklick authorized Leroij Kios or Kila to sign the defendants leases on their behalf.

B. Plaintiffs' Payment of Money

The plaintiffs assert that upon Kila's representations that Lomajurok Weto did not have an Alap or Senior Dri Jerbal, defendant Cui on August 28, 2015, (i) signed Pltfs' August 2015 Lease (*see* Plaintiff's Exhibit P-6), (ii) paid Sam Leon \$33,000 for existing buildings on the land (*see* Plaintiffs Exhibit P-3), and (iii) paid Kila \$10,000 as rent (*see* Plaintiff's Exhibit P-4). Further, the plaintiffs assert that upon Leroij Kios and Kila's representations that Lomajurok Weto did not have an Alap or Senior Dri Jerbal, defendant Cui on August 11, 2016, (i) signed Pltfs' August 2016 Lease and (*see* Plaintiff's Exhibit P-6) and (ii) paid Kila \$3,800 in advance rent, which payment was witnessed by Leroij Kios (*see* Plaintiff's Exhibit P-7).

III. ANALYSIS

The plaintiffs asked the Court for the following relief: (A) to declare Pltfs' August 2016 Lease is valid; (B) to declare Chen's May 2017 Lease is null and void; (C) to prohibit the defendants from occupying the subject premises without the plaintiffs' consent; (D) to evict Chen from the premises; (E) to order Chen and her company to remove any improvements from the premises; (F) to award the plaintiffs damages for their financial loss and loss of business profits; (G) to award the plaintiffs punitive damages; and (H) for such other relief as the Court deems just. See FAC, at 5-6. The Court will first address requests (A) through (E) regarding the leases.

A. The Leases

1. Pltfs' August 2015 Lease and Pltfs' August 2016 Lease

For the following reasons, the Court concludes that both Pltfs' August 2015 Lease and Pltfs' August 2016 Lease are void. Article X, Section 1(2) of the Constitution provides that "it shall not be lawful or competent for any person having any right in any land in the Republic, under the customary law or any traditional practice to make any alienation or disposition of that land, whether by way of sale, mortgage, lease, license or otherwise, without the approval of the Iroijlaplap, Iroijedrik where necessary, Alap and the Senior Dri Jerbal of such land, who shall be deemed to represent all persons having an interest in that land." At the time Pltfs' August 2015 Lease and Pltfs' August 2016 Lease were signed, Lomajurok Weto was land owned under the customary law and traditional practice of the Marshall Islands and Sally Jacklick was the Alap and Dolores Jacklick was the Senior Dri Jerbal of Lomajurok Weto. However, they did not sign or otherwise approve the leases. Moreover, the plaintiffs did not establish that Sally Jacklick or Dolores Jacklick authorized either Leroij Kios or her daughter Kila to sign on their behalf.

Accordingly, Kila's execution of the Pltfs' August 2015 Lease and Leroij Kios's execution of the Pltfs' August 2016 Lease were not "lawful or competent" under the Constitution. Accordingly, the Court concludes that the leases are void.

In addition to the leases being void for lack of the Alab's and the Senior Dri Jerbal's approvals, they are fatally ambiguous. They are incorrectly written as leases for *Lojaurok* Weto, not *Lomajurok* Weto, and the Pltfs' August 2016 lease lacks the required legal description or survey map.

2. Chen's May 2017 Lease

Chen's May 2017 Lease, on the other hand, is valid for several reasons.

First, Chen's May 2017 Lease describes the correct weto.

Second, Chen's May 2017 Lease is executed by, or on behalf of, the known Iroj, Alap, and Senior Dri Jerbal: Leroij Kios, Alap Sally Jacklick, and Senior Dri Jerbal Dolores Jacklick.

Third, the plaintiffs alleged, but failed to establish, that defendant Chen knew or should have known about the plaintiffs' leases before she secured hers. Chen testified she did not know about plaintiffs' leases prior to concluding her lease. Some time in 2017, she approached Leroij Kios about leasing the subject land. Leroij Kios referred her to the Alap and Senior Dri Jerbal, Sally Jacklick and Dolores Jacklick. Chen approached Dolores Jacklick and they signed the lease. Chen then returned to Leroij Kios, and she signed Chen's lease. When Chen had the government surveyors survey the land for her lease, they did not mention another lease on the land. When Chen went to the LRA to register her lease, the LRA did not mention the plaintiffs' leases. Moreover, plaintiff Cui testified that he did not approach defendant Chen when he saw her clearing the land, or when he saw her constructing buildings on the land.

Fourth, in her deposition, when asked whose lease did she supported, plaintiff Cui's or defendant Kathy Chen's, Leroij Kios replied "Kathy's."

For the above reasons, the Court concludes that Chen's May 2017 Lease is valid, as against the plaintiffs. Accordingly, the Court dismisses the plaintiffs' FAC, as against the defendants, including defendant Chen, and rejects the plaintiffs' prayers (A) through (E).

B. Financial Loss and Business Profits

In their prayer (F) the plaintiffs seek for their financial loss and business profits, i.e., compensatory damages.

With respect to Pltfs' August 2015 Lease, the plaintiffs suffered a loss of \$10,000 for rent. The loss resulted from Kila's misrepresentation that she had (i) the authority to sign Pltfs' August 2015 Lease for the Alap and Senior Dri Jerbal and (ii) the authority to accept the \$10,000 rent payment. Accordingly, the Court concludes that Kila owes the plaintiffs \$10,000 for rent they paid her under the Pltfs' August 2015 Lease.

With respect to Pltfs' August 2016 Lease, the plaintiffs suffered the loss of advanced rent in the amount of \$10,000, which was incorporated from Pltfs' August 2015 Lease, and the loss of an additional \$3,800 rent for the 2016 contract year. The losses resulted from (i) Kila's misrepresentation that she had the authority to sign Pltfs' August 2015 Lease for the Alap and Senior Dri Jerbal and (ii) Leroij Kios apparent misrepresentation that she had the authority to sign Pltfs' August 2016 Lease for the Alap and Senior Dri Jerbal. Kila received the \$10,000. Kila received the \$3,800, and Leroij Kios witnessed her receipt of the \$3,800. Accordingly, the Court concludes that Kila owes the plaintiffs \$13,800 for the rent they paid her under both the Pltfs' August 2015 Lease and the Pltfs' August 2016 Lease.

With respect to Leroij Kios, the evidence is inconclusive. After reading the Transcript of the Deposition of Leroij Erki Kios taken in this case on July 2, 2018, it is clear to the Court that she is not able to remember the plaintiffs' leases or the details of Chen's May 2017 Lease. Her testimony, taken as a whole, is inconsistent. She was 80 years old at the time of the deposition. Accordingly, even if Leroij Kios did sign the Pltfs' August 2016 Lease and witnessed Kila receipt of \$3,800 in advance rent, the Court cannot determine, and the plaintiffs did not prove, that Leroij Kios had the mental capacity to understand the transaction. For a contract to be valid, there must be a "meeting of the minds." With respect to the plaintiffs and Leroij Kios, the Court does not find a meeting of the minds. For this reason, the Court does not conclude that Leroij Kios is liable for plaintiffs' \$13,800 loss in connection with the Pltfs' August 2015 Lease and Pltfs' August 2016 Lease.

Moreover, the plaintiff's cannot blame Leroij Kios for the flaws in their leases. By mislabeling their leases as leases of a portion of Lojaurok Weto, instead of Lomajurok Weto, and by failing to attach a legal description or survey map to Pltfs' August 2016 Lease, the leases are not enforceable, and the LRA lease registration process, which was designed to protect investors, was of no benefit to them. If the plaintiffs' leases were not so fatally flawed, the LRA registration process would have given them priority over Chen's May 2017 Lease. The plaintiffs have no one to blame but themselves.

As to plaintiffs' payment of \$33,000 to Sam Leon, the plaintiffs must look to Mr. Leon. Court concludes that the defendants are not liable to the plaintiffs for the \$33,000 the plaintiffs paid to Mr. Leon for buildings on the subject land.

With respect to lost profit, the plaintiffs proved no losses.

C. Punitive Damages

As explained above, for Kila's misrepresentations, she is liable to the plaintiffs for \$13,800 in compensatory damages. However, in addition to compensatory damages, in their prayer (G), the plaintiffs seek punitive damages. With respect to punitive damages, 29 MIRC Section 151 provides for treble damages. Section 251 reads as follows:

In civil cases where the defendant has been found liable because of fraud, or deceit, or misrepresentation, the court *shall* add to the judgment, as punitive damages, an amount equal to three (3) times the actual amount of damages found by the trier of facts.

(Emphasis added.) Accordingly, the Court concludes that for Kila's misrepresentations, she is liable to the plaintiffs for punitive damages in the amount of three times the \$13,800 compensatory damages, i.e., \$41,400. The amount of punitive damages is higher than the Court would otherwise have ordered; however, this is what the statute requires. If the Nitijela changes the statute to replace the word "shall" with "may" the Court will have more flexibility.

IV. CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

THAT plaintiffs Cui Chengri and Gold Coast International's leases, Pltfs' August 2015 Lease and Pltfs' August 2016 Lease, are void;

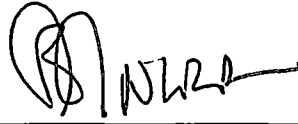
THAT defendant Kathy Chen's May 2017 Lease is valid as against the plaintiffs;

THAT plaintiffs Cui Chengri and Gold Coast International are awarded judgment against defendant Kila Kios for compensatory damages in the amount of \$13,800, punitive damages in the amount of \$41,400, a filing of \$25, and a service fee of \$5.00, with interest thereon at the statutory rate of 9% per annum from the date of this judgment;

THAT except as stated above, the plaintiffs' claims against the defendants are dismissed;
and

THAT the parties shall bear their own costs.

Entered: March 9, 2020.

A handwritten signature in black ink, appearing to read 'C. Ingram', written over a horizontal line.

Carl B. Ingram
Chief Justice, High Court