

IN THE SUPREME COURT OF GUAM

**SUZANNE KALKHOFF PORTER, as Trustee of THE RUTH
KALKHOFF LIVING TRUST and RUTH KALKHOFF by and
through her guardian ad litem, SUZANNE KALKHOFF PORTER,
Plaintiffs-Appellants**

vs.

EUVILLA MASSEY NOEL
Defendant-Appellee

OPINION

Supreme Court Case No. CVA97-061
Superior Court Case No. CV1004-94

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Appeal from the Superior Court of Guam
Argued and submitted on October 13, 1998
Hagåtña, Guam

Appearing for the Plaintiffs-Appellants:

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BEFORE: PETER C. SIGUENZA, Chief Justice¹; JANET HEALY WEEKS, and BENJAMIN J. F. CRUZ, Associate Justices.

SIGUENZA, C.J.:

[1] Suzanne Kalkhoff Porter, on behalf of Ruth Kalkhoff (collectively “Porter”) appeal from an amended judgment reflecting a decision and order issued by the Superior Court granting Euvilla Massey Noel’s (hereinafter “Noel”) motion to amend findings and amend judgment, denying Porter’s post-trial motions to amend findings and amend judgment, and denying Porter’s motion for a new trial. Porter challenges the determination made by the trial court that Noel is the sole holder of a leasehold interest in real property located in Tamuning, Guam, and a finding that no equitable assignment of that leasehold interest was created in favor of Ruth Kalkhoff. Upon review of the record, the findings of the trial court are affirmed.

I.

[2] On November 12, 1971, Lon Massey (“Massey”)² entered into a lease agreement with the Guam Economic Development Authority (“GEDA”), whereby Massey leased from GEDA Lot Nos. 11 and 12 in E.T. Calvo Memorial Park, Tamuning, Guam for a term of ninety (90) years. Subsequently, on April 1, 1973, Massey entered into an agreement (“Document One”) with Ruth Kalkhoff (“Kalkhoff”) which provides in relevant part:

¹The signatures in this opinion reflect the titles of the justices at the time this matter was considered and determined.

²The defendant-appellee, Euvilla Noel, is the widow of Lon Massey and is the successor in interest to the subject property. *See In the Matter of the Estate of Lon Massey*, Probate Case No. 0258-90 (Super.Ct.Guam 26 Sept. 1990).

I, LON MASSEY, HEREBY agree to give to RUTH E. KALKHOFF, subject to conditions contained in this agreement, one-half interest in the Soule Building, consisting of 9,600 square feet, more or less, being erected on Lot Nos. 11 and 12, Block 4, situated in the E. T. Calvo Memorial Park, Tamuning, Guam, and shown on ESCO International Drawing No. 3099-1, titled "Tract-259," approved by the Department of Land Management on October 30, 1970, and containing a total area of 11,200 square feet, more or less, providing she RUTH E. KALKHOFF, pays one half of the cost of the building and the erection thereof, and one half of all rentals to GUAM ECONOMIC DEVELOPMENT AUTHORITY, and property taxes and insurance, and any other expense during the term of the lease;

TO HAVE AND TO HOLD the said premises and improvements, and all necessary easements the rights of way, including parking spaces upon the premises for the term of the lease I have with GUAM ECONOMIC DEVELOPMENT AUTHORITY. . .

[3] On August 1, 1973, a second document was executed between Massey and Kalkhoff, labeled a "Contract Agreement" ("Document Two"). This agreement was contingent upon compliance with the earlier agreement and provided that Kalkhoff had the "authority to use and lease her half of the building herein described as she desires, to have and to hold for her heirs, executors, and administrators for the length of the term of the lease I have with GUAM ECONOMIC DEVELOPMENT AUTHORITY."

[4] A third document, in the form of a letter not specifically addressed to anyone, executed by Massey on August 13, 1973 ("Document Three"), proclaimed that Kalkhoff had a one-half interest in the Soule Building, that she had paid in full her part of the building, and that she was free to lease one half of the building, specifically the portion on the right side.

[5] Massey passed away on May 14, 1990. Subsequently, disputes arose as to the character of the interest held by Kalkhoff in the property. Porter filed an action for declaratory relief to determine the interests of the parties in the ground lease held with GEDA and for monetary damages for breach of contract. A bench trial was conducted and the trial court issued a written Decision and Order on July 18, 1997. The trial court entered a judgment on the docket on August 28, 1997. Noel filed a

motion to amend the Findings of Fact and Conclusions of Law which was granted by the trial court. Porter also filed several post-trial motions which were denied by the trial court. An amended final judgment was subsequently entered on the docket on January 2, 1998.

[6] Porter filed a Notice of Appeal on December 29, 1997. Subsequently, an amended Notice of Appeal was filed on January 16, 1998, after the entry of a final amended judgment.

II.

[7] This court has jurisdiction pursuant to 7 GCA §§ 3107 and 3108 (1994).

III.

[8] The parties submit that the issues before the Court involve matters of law that should be reviewed *de novo*. The parties also assert that the issues in this case involve contract interpretation and contract ambiguity. However, we believe the present dispute revolves around equitable relief, or the denial thereof.³ The issuance of equity relief is a matter of discretion that is reviewed for an abuse of discretion by the trial court. *Time Oil Co. v. Wolverton*, 491 F.2d 361, 365 (9th Cir. 1974)(citations omitted).

IV.

[9] The dispositive issue before the court is whether Massey intended to equitably assign one-

³The trial court noted both parties admitted that a legal assignment of the subject property did not occur. The trial court focused upon the existence of a partial equitable assignment or a constructive trust. It is unclear whether appellants are revisiting the occurrence of a legal assignment. However, this court does not believe the issue of a legal assignment has been properly raised either in the trial court or on appeal. Therefore, we decline to address this issue at this time.

half of the leasehold interest held by Massey with GEDA to Kalkhoff. Porter contends the trial court erred in its failure to find that in light of the documents executed by Massey evidencing such an intention, an equitable assignment had occurred between Massey and Kalkhoff.

[10] An equitable assignment is one that, although unenforceable in a court of law, is recognized and enforceable in a court of equity. *See K. Woodmere Associates, L.P., et al. v. Menk Corp.*, 720 A.2d 386 (N.J.Super.Ct.App.Div. 1998). “It is recognized solely because the assignee is a purchaser for value.” *Id.* (citing *Sheeran v. Sitren*, 403 A.2d 53, 59 (N.J.Super.Ct.Law Div. 1979)). An assignment becomes enforceable in equity in order to balance the inequities where no enforceable legal remedy exists.. “[E]quity disregards mere form, [thus] no particular words or particular form of instrument is necessary to effect an equitable assignment.” *C.L. Carr v. Dorenkamper*, 556 N.E.2d 1333, 1336 (Ind.Ct.App. 1990)(citations omitted). Therefore, any language, however informal, that sufficiently demonstrates the intention of the owner of the property in question to transfer it so that it will become the property of the transferee, is sufficient to effect an equitable assignment.

[11] Although no particular form is necessary to constitute an equitable assignment, the following essential elements must be present to justify a finding of an equitable assignment:

- a) the intention of the assignor must be to transfer a present interest in an existing fund or subject matter;
- b) there must be an absolute appropriation of the fund or subject matter by the assignor and an intention to vest a present right in the assignee;
- c) the assignor must relinquish all control over the fund or subject matter; if any control is retained the assignment will be invalid; and
- d) the assignment must also be based on valuable consideration.

Sheeran v. Sitren, 403 A.2d at 59 (citations omitted).

Of these, intent of an assignor seems to outweigh the other factors. Whether a transaction constitutes an equitable assignment is to be decided from the circumstances and equities involved. *Id.*

[12] Porter argues that the only interpretation that can be derived from the documents executed by Massey is that Massey intended to assign one-half of the premises, created by the GEDA lease, to Kalkhoff. Porter specifically points out that the references used in Document One, such as “the said premises and improvements,” indicate the intention to transfer was not just the building, but also the land on which the building was erected. Porter further argues that the area referenced in Document One, “containing a total area of 11,200 square feet,” equals exactly one half of the property leased from GEDA, and only bolsters their assertion of Massey’s intent. Porter proclaims that “[t]here is no [other] possible interpretation.” We disagree.

[13] The subject matter referenced in Document One is specifically the Soule Building. The portions of Document One noted by Porter, when read as a whole, simply provide a description of the location of the building. It is not apparent to this court that Massey intended to assign a one-half interest based upon the language of Document One. The important factor to note is that the reference of “containing a total area of 11,200 square feet” is set forth in the portion of Document One describing location, which is in turn denoted by the words “being erected on.”

[14] In addition, the language contained in Document Two does not suggest the transfer of any interest in the GEDA lease. In that document, which references the earlier agreement (Document One), Massey simply grants authority to Kalkhoff to lease one half of the Soule building. The granting language of Document Two is as follows;

I, LON MASSEY, . . . do hereby give RUTH E. KALKHOFF all authority to use and lease her half of the building herein described as she desires, to have and to hold for her heirs, executors, and administrators for the length of the term of the lease I have

with GUAM ECONOMIC DEVELOPMENT AUTHORITY.

Again, it is the language of this document that leads us to believe that the intent of Massey was to transfer a one-half interest in the Soule Building and not the premises of the GEDA lease.

[15] Document Three is a general letter advising any party of Ruth Kalkhoff's ability to lease one half of the Soule Building. This document only provides additional support to the trial court's conclusions that Massey did not intend to transfer a one half interest in the GEDA lease. As in Document One, the reference to the GEDA lease is used for purposes of identification of the building. We do not find any granting language regarding the GEDA lease nor do we find any language even suggesting such a proposition.

[16] Porter's contention that Massey intended to transfer a one-half interest in the property leased from GEDA, is unsupported by the documents purportedly evidencing this intent. Even if Massey may have intended to assign the property as alleged by Porter, the evidence presented to the trial court did not provide a basis for such a finding. The trial court's analysis regarding Massey's intent is a pivotal factor in determining the existence of an equitable assignment because the absence of intent weighs heavily against finding an equitable assignment. It is this lack of intent on the part of Massey to assign an interest to Kalkhoff that leads us to find no abuse of discretion in the decision of the trial court.

V.

[17] After reviewing the record below and the findings of the trial court, we find no reason to disturb the conclusions of the trial court. We find no error in the trial court's analysis of the issue brought before this court. Therefore, the decision of the Superior Court denying Porter's request for equitable relief, in its refusal to find the existence of an equitable assignment, is **AFFIRMED**.

JANET HEALY WEEKS
Associate Justice

BENJAMIN J.F. CRUZ
Associate Justice

PETER C. SIGUENZA
Chief Justice