

IN THE SUPREME COURT OF GUAM

ALICE MARIE M. TAIJERON

Plaintiff-Appellant

vs.

DUK GILL KIM

Defendant-Appellee

Supreme Court Case No. CVA96-018

Superior Court Case No. CV1576-94

OPINION

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Appeal from the Superior Court of Guam
Argued and Submitted on February 1, 1999
Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, Chief Justice¹, JANET HEALY WEEKS² and RICHARD BENSON, Associate Justices.

SIGUENZA, C.J.:

[1] The instant suit arises from alleged breaches of certain covenants of a lease agreement that do not include the covenant to pay rent. Alice Marie M. Taijeron appeals the trial court's grant of the Duk Gill Kim's motion for summary judgment. For the reasons below, we affirm the decision of the trial court and order the award of reasonable attorney's fees and costs to Kim for this appeal.

BACKGROUND

[2] On October 19, 1984, Elias Taijeron (hereinafter "Elias") entered into an agreement to lease a portion of Lot No. 5103-1, located in Harmon, Dededo, Guam, with Duk Gill Kim (hereinafter "Kim") and two other individuals.³ The lease was for a term of twenty five (25) years to begin on November, 1984, and to end on December 2009. Rent was to be paid according to a schedule attached to the lease.⁴ It is undisputed by the parties that Kim had paid to Elias all of the rent for the full term of the lease and that Elias had paid the gross receipts tax when he received all the rent.

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

²Justice Janet Healy Weeks resigned from the court after hearing oral arguments in this matter.

³On May 5, 1989, Kim and the other lessees, with the consent of the Elias, agreed to an assumption, by Kim, of all rights, duties and liabilities as the sole lessee of the property.

⁴On May 29, 1986, a written modification of the original lease was agreed to by Elias and the lessees. The amendment modified the pay schedule and provided that the total amount of the lease for twenty five years was fifty thousand dollars (\$50,000.00) payable over a certain period of time. All other terms of the original lease agreement remained the same.

[3] On August 24, 1993, Elias conveyed the subject property to Alice Taijeron (hereinafter “Alice”), his daughter, by deed of gift. On July 18, 1994, Alice caused a Notice of Cancellation of Lease to be sent to Kim. On September 19, 1994, a Notice to Perform Terms, Conditions and Covenants or Surrender was communicated to Kim. The Notice alleged that Kim had failed to perform the following conditions and covenants of the Lease Agreement: (1) to keep and maintain all buildings in good appearance and repair; (2) to obtain and provide casualty insurance payable to the lessor; (3) permitting the premises to be used for an unlawful purpose by allowing it to be used as a barracks without proper authorization and permits; and (4) to obtain and provide comprehensive general liability insurance.

[4] The present action was filed on November 4, 1994, alleging the aforementioned breaches of the lease agreement. Alice’s prayer for relief included the cancellation of the lease and for immediate possession of the premises. Kim answered and counter-claimed against Alice. Prior to trial, Kim filed his motion for summary judgment on the basis that, at the time of the alleged breaches, neither the Alice nor her father was in possession of a business license, as required by Section 16027 of the Government Code of Guam (now 11 GCA § 70130).

[5] The trial court granted Kim’s motion for summary judgment. It found that Alice could not maintain the instant action against Kim for the reason that she did not have a business license at the time of the alleged breaches and that the issue of whether her father possessed a business license was irrelevant to this suit.

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STANDARD OF REVIEW

[6] This court has jurisdiction pursuant to 7 GCA §§ 3107 and 3108 (1994). A grant of summary judgment is reviewed *de novo*. *Izuka Corp. v. Kawasho Int'l*, 1997 Guam 10, ¶ 7; *Kim v. Hong*, 1997 Guam 11, ¶ 5.

[7] Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. . .” Guam R. Civ. P. 56(c) (1995). There is a genuine issue if there is sufficient evidence which establishes a factual dispute requiring resolution by a fact-finder. *Izuka*, at ¶ 7. However, the dispute must be as to a “material fact” *Id.* “A ‘material’ fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit . . . [d]isputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment.” *Id.* (citation omitted).

[8] If the movant can demonstrate that there are no genuine issues of material fact, the non-movant cannot merely rely on allegations contained in the complaint, but must produce at least some significant probative evidence tending to support the complaint. *Izuka*, at ¶ 8 (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2510 (1986)). In addition, the court must view the evidence and draw inferences in the light most favorable to the non-movant. *Id.* (citation omitted).

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DISCUSSION

The Guam Business License Law

[9] This case requires an examination of a statutory scheme known as the Business License Law. It is found in Title 11 of the Guam Code Annotated §§ 70101 *et seq.* (1994)(formerly Section 16027 of the Government Code of Guam). Issues of statutory construction and jurisdiction are reviewed *de novo*. *People v. Quichocho*, 1997 Guam 13, ¶ 3. Of relevance to the instant case, section 70130 provides, in pertinent part:

Restriction of Activities on Persons Without Licenses.

It is the policy of the government of Guam that all businesses have business licenses. Therefore:

(a) any person engaged in any commercial activity or money-making activity which does not require a business license (such as professionals, religious organizations, political candidates, etc.) shall obtain a statement from the Department of Revenue and Taxation indicating the name of the applicant, that no business license is required, and the nature of the activity involved, which may be used in lieu of a business license for the nature of their business for purposes of this Section. The term "business license" as used in this Section shall include such statements from the Department of Revenue and Taxation that the activity is exempt from the requirement for a business license;

(b) no lease of real property may be recorded without a copy of the current business license of the Landlord (Lessor) attached;

(c) *It shall be contrary to public policy for the courts to enforce leases for Guam land for which there is no business license held by the lessor of a lease or his or her successor in interest.* Therefore, rental payments for Guam land accrued after the effective date of this Section during periods for which the person seeking to collect said rents had no business license for such lease or rental activity may not be collected through the courts, and *no person may be evicted from any leased real property for which rent is to be paid for any breach occurring or for any non-payment of rent during any period after the effective date of this Section when the person seeking to enforce the terms of the lease did not have a valid business license to rent*

said premises;

(d) no commercial activity (including operating or leasing of real property) doing business on Guam without a business license may file suit in Guam courts until such time that a business license is obtained. No person engaged in commercial activity without a business license may use the courts to enforce, directly or indirectly, any obligation, lien, or contract incurred during the period of such commercial activity without a business license;

11 GCA § 70130 (1994) (emphasis added).

10] There is no ambiguity as to the prescriptions of the statute as it relates to the instant case. Simply stated, the statute requires that any person engaging in any commercial activity or money-making activity, including the lease of real property, must obtain a business license. If such person does not have a business license then he is foreclosed from utilizing the courts of Guam to sue for rent or evict anyone from leased property for any breach during any period of time that the lessor or landlord did not have a business license.

[11] However, the statute further directs the courts to liberally construe the particular sections of the statute in favor of a landlord and ignore technical deficiencies if it finds that there has been substantial compliance with the business license laws, rules, and regulations and if it finds that the landlord has filed on a timely basis gross receipts tax returns for the periods in question.

[12] There can be no question that the instant statute is the mechanism whereby the stated purposes of the Business License Law is achieved. That purpose being the licensing of businesses in Guam in order that all necessary and reasonable control and regulation thereof may be practiced by the government for the protection of the health, safety and morals of the people of Guam. 11 GCA § 70102 (1994). In the context of a lessor of real property or his successor in interest, possession of a business license to rent land in Guam is a necessary predicate to utilization of the

courts for the enforcement of leases. In addition, the licensing ensures the capture of accountable revenues from the activity of leasing land in Guam.⁵

3] Here, there is no dispute that the Appellant did not possess a business license at the time of the alleged breaches. Therefore, by the statute's terms, the Appellant can not maintain a suit in the courts of Guam to seek relief for the violations of the lease provisions that occurred during the period she did not have a business license.

Substantial Compliance

[14] Alice argues, however, that despite her failure to have a business license at the time of the breaches, she is entitled to maintain this action pursuant to 11 GCA § 70130(f). That provision states:

The courts shall liberally construe subsections (b) through (e) of this Section in favor of the landlord or business person and shall ignore technical deficiencies if the courts find there has been substantial compliance with the business license laws, rules, and regulations and if the courts find that the landlord or business person has filed on a timely basis (within thirty (30) days of the due date) gross receipts tax returns fully reporting all accountable revenues from the activity concerned for the periods in question.

11 GCA § 70130(f) (1994).

[15] The doctrine of substantial compliance has been addressed by other jurisdictions as it pertains to licensing statutes. The Supreme Court of Arizona had dealt with the issue of whether substantial compliance of a contractor licensing statute can satisfy the licensing prerequisite to a civil

⁵ This court has had occasion to discuss the instant statute and, in dicta, has observed that one purpose of 11 GCA § 70130 is to obtain compliance and collection of gross receipts taxes. *EIE Corporation et al. v. The Long term Credit Bank of Japan*, 1998 Guam 6, ¶ 17.

action in the case of *Aesthetic Property Maintenance, Inc. v. Capitol Indemnity Corp.*, 900 P. 2d 1210 (Ariz. 1995). It determined that whether substantial or strict compliance is required is largely a question of which test promotes the legislative purpose. *Id.* at 1213. In that case, a contractor originally had had a business license in January of 1990, and renewed it in December, 1990. It moved locations and included its new address with the renewal. However, in late 1991, the Registrar of Contractors erroneously sent the renewal notice of the contractor to the old address, and the contractor therefore did not receive the notice and did not renew its license which was suspended by operation of law in January, 1992. In late June, 1992, the contractor discovered its suspension and immediately sought and received reinstatement. During the lapse, the contractor maintained its general liability insurance, worker's compensation insurance and contractor's licensing bond. Contractor performed and entered into contracts before and during its suspension and sought recourse by the courts to recover payment. The defense of non-licensure was raised. After conducting a survey of the licensing statutes of other jurisdictions, the court concluded that the underlying theme is that substantial compliance is adequate when it satisfies the general policy or purpose of the statute. *Id.* at 1214. (citations omitted).

[16] In *Aesthetic*, the court held that substantial compliance was appropriate as to the particular statute at issue. *Id.* Some of the factors it found relevant to the issue of substantial compliance was (1) whether the suspension of the contractor was by operation of law or for cause; (2) whether the registrar's failure contributed to noncompliance; (3) because the statute was designed for the protection of the public, was the public in fact protected during the time the license was suspended; (4) did the contractor knowingly ignore the registration requirements; (5) did the contractor, immediately upon learning of the suspension or other statutory noncompliance, apply to reactivate

the license or remedy the statutory violation; and finally, (6) did the failure to comply with the statute prejudice the party the statute seeks to protect. *Id.* The Supreme Court of Arizona found each of the factors in favor of the contractor and that it had substantially complied with the particular licensing statute. *Id.*

[17] The California Supreme Court has also addressed the doctrine of substantial compliance in the context of a statutory licensing scheme and has held that when a plaintiff, who is unlicensed, seeks redress through the California courts and application of the doctrine of substantial compliance is warranted by the facts the court considers: (1) whether the plaintiff held a valid license at the time of contracting; (2) whether the plaintiff readily secured a renewal of that license and (3) whether the responsibility and competence of plaintiff's managing officer were officially confirmed throughout the period of performance of the contract. *Latipac v. Superior Court*, 64 Cal. 2d 278, 281-282, 411 P. 2d 564 (1966).

[18] Substantial compliance of the instant statute was examined by the Appellate Division in the case of *Archbishop v. G.F.G. Corp.*, 1995 WL 604383 (D. Guam App.Div. October 2, 1995), wherein that court was faced with the very same issue with respect to the enforcement of a lease provision for the payment of rent. In that case, the defendant corporation entered into a 99 year lease with the Archbishop of Guam in February, 1989. The lease specified a sum certain to be paid as rent each month for the term of the lease. The defendant failed to pay rent beyond December 1992. An unlawful detainer action was instituted in September, 1994. The defendant's answer included, as a defense, the Archbishop's violation of the above-referenced statute. Defendant filed a motion to dismiss arguing that the Archbishop's lack of possession of a business license during the time at

issue barred the relief sought.⁶ The lower court denied the defendant's motion and trial on the matter proceeded. During the time period for which he had sought to recover rent, the Archbishop did not have a business license nor did he have a statement of exemption from the Department of Revenue and Taxation; however, the lower court found that the Archbishop substantially complied with the statute by obtaining a certificate of exemption from the Department of Revenue and Taxation in October, 1994. The Appellate Division reversed.

[19] The appellate court held that it was consistent with the policy of the statute that all businesses must have either a business license or a statement of exemption issued by the Department of Revenue and Taxation. *Id.* It also found that the language of the statute is mandatory. *Id.* Finally, because the acquisition of a statement of exemption was the same as the term "business license", the Archbishop had the burden of proving he had either a business license, or an exemption, at the time of the breach. *Id.*⁷

[20] The Archbishop argued that, pursuant to subsection (f), he had substantially complied with the business license requirement. But the court responded by observing that a substantial compliance determination cannot result in the circumvention of a clear statutory policy. *Id.* (citation omitted). It held that the policy of obtaining a business license or an exemption is at the heart of the statute and that the purpose of the statute would be impaired if a party seeking enforcement of a lease could substantially comply with the statute's provisions by obtaining a license or statement of exemption

⁶11 GCA § 70130 was formerly Section 16027 of the Government Code.

⁷In any civil action, the failure of one party to have a business license shall be an affirmative defense by any other party. Once the person raising the defense establishes that there is or was no business license at the relevant time, the burden of proof shall be upon the person without a license to establish that the provisions of this Section do not act as a bar to his or her claim or cause of action. 11 GCA § 70130(g) (1994).

after the lease obligations have incurred. *Id.*

[21] Similarly, Alice did not obtain her business license until well after she obtained ownership to the property and after the law suit to enforce the lease agreement was filed. It is not disputed that Alice was the successor in interest of Elias. On August 24, 1993, Elias had conveyed to Alice “all my right, title, and interest in and to the following described property: Lot 5103-1 Dededo, Guam, containing an area of 7,953 square meters”. Appellant’s Excerpts of Record at 74. The statute unambiguously requires that, as the successor in interest, Alice must hold a business license in order to enforce the lease. 11 GCA § 70130(c). It is also undisputed that Alice did not obtain her business license to rent the premises until June 15, 1995, seven months after the suit was filed and close to two years from the date Elias had conveyed the property to her. Moreover, the record is devoid of any facts that show Alice making any effort to timely secure a business license to lease the property. Where, as it is here, Alice made no immediate attempt to remedy the statutory violation, it can not be said that she nonetheless substantially complied with the licensing requirement by acquiring it several months after her duty to do so arose. *Aesthetic*, 900 P. 2d at 1214.

[22] Therefore, like the Appellate Division in *Archbishop*, we hold that Alice’s procurement of a business license well after the lease obligations have incurred can not be said to be a mere technical deficiency that should be ignored by the court below.⁸

[23] Alice alternatively argues that, in addition to the subsequent procurement of the license, Elias

⁸Although Alice encourages this court to disregard the Appellate Division’s interpretation of the business license law, she does not intimate a basis for its disregard other than the mere citation to earlier decisions of this court that reiterate this court’s authority to modify interpretations which had previously been rendered by the federal court. *See e.g., Sumitomo Construction Co., Ltd. v. Zhong Ye, Inc.*, 1997 Guam 8, and *People v. Quenga*, 1997 Guam 6. Here, we have no occasion to question the reasoning and interpretation of the Appellate Division’s decision and we therefore decline her invitation to do so.

was in possession of a special power of attorney and in possession of a valid business license at the time of the breaches, and that he had timely filed gross receipt tax returns on the rent paid. The trial court ruled that Elias' possession of a business license at the time of the alleged breaches was not of any consequence to Alice's suit. We agree.

[24] An agency relationship between Alice, as principal, and Elias, as agent, was formed by the special power of attorney executed by Alice to Elias. Appellant's Excerpts of Record at 73. She purports to ratify and confirm all that Elias shall do or cause to be done regarding the leasehold interest. Excerpts of Record at 73. An unlicensed principal may employ a licensed agent to perform an act that the principal can not do. Restatement (Second): AGENCY § 19 comment d, (1957). However, the Business License Law specifically requires that the lessor, or his successor in interest, must have a business license before he can seek aid from the courts to enforce leases for Guam land. 11 GCA §70130(c). It was Alice who was mandated by the law to obtain a business license in order to enforce the provisions of the lease agreement she succeeded to.

[25] Moreover, it is well established that after executing a lease, the lessor's interest in the land is a reversion to which the right to receive rents and benefits under the lease is attached as an incident and that a transfer of the reversion carries with it the benefit of leasehold covenants which run with the land and the right to receive rents under an existing lease unless specifically reserved. *Anderson v. Island Creek Coal Co.*, 297 F.Supp. 283 (W.D. Ky. 1969). However, the transferee of the reversionary interest can not sue for breaches that had accrued before her accession to ownership. As stated in 49 Am. Jur. 2d, (*Landlord and Tenant*) § 1064:

Generally, the voluntary transfer of the reversion does not carry with it the right to sue the lessee for breaches of covenants or agreements which occurred prior to the transfer. The main foundation for this rule is that the party owning the real estate at the time of the breach

is ordinarily the one injured and, thus, is the party to bring the action even though he or she has parted with the real estate. The statutes conferring upon a grantee of the reversion the right to enforce covenants and conditions in leases, cannot be construed as taking away from the transferor his right of action for an injury causing a personal in the depreciated value of the property, and giving it to the transferee, who has suffered no loss. (footnotes omitted)

49 Am. Jur. 2d § 1064 (1995).

[26] Here, Elias is not a party to the suit even though the alleged breaches commenced during his ownership of the property; nor has he taken any action to seek redress for the alleged violations of the lease agreement when he was the lessor. Thus, although Alice can certainly maintain an action for a breach of the lease that occurred during the time she was in possession of a business license, she can not sue for those breaches that occurred prior to her ownership.

[27] Therefore, nothing in the record supports Alice's contentions that she had substantially complied with the Business License Laws and that she is entitled to maintain the instant action. There simply is no basis for the inference that the law's full purposes were served despite the entire absence of necessary licensure. *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988, 996, 803 P. 2d 370 (1991).

ATTORNEY'S FEES

[28] Finally, the court finds that Kim is entitled to his reasonable attorney's fees for this appeal. In his responsive brief, Kim requested the award of attorney's fees and identified the authority under which said fees would be sought. *See* GRAP 13(k) (1996). The lease agreement provides for the recovery of reasonable attorney's fees and court costs by the prevailing party. Appellant's Excerpts of Record at 11, ¶ 29. Accordingly, we award reasonable attorney's fees and costs and direct Kim to submit to this court a statement of his attorney's fees and costs for this appeal.

CONCLUSION

[29] In conclusion, because the Alice was neither the owner of the premises nor in possession of a business license at the time of the alleged breaches and had made no effort to secure a business license until well after a significant period of time had elapsed from the date of her succession to the lease in question, and there were no genuine issues of material fact, we hold that it was not error to grant Kim's motion for summary judgment.

[30] Therefore, we AFFIRM the trial court's grant of the Kim's motion for summary judgment and ORDER Kim to submit a statement of account for his reasonable attorney's fees and costs for this appeal.

JANET HEALY WEEKS
Associate Justice

RICHARD H. BENSON
Associate Justice

PETER C. SIGUENZA
Chief Justice