**For Publication**

**IN THE SUPERIOR COURT**
**OF THE**
**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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| **ESTATE OF SOLEDAD T. OGUMORO,**<br>**Plaintiff,**<br><br>**v.**<br>**HAN-YOON KO, et al.,**<br>**Defendant.** | **CIVIL ACTION NO. 99-0655**<br><br><br><br>**ORDER DENYING KO'S MOTION FOR RECONSIDERATION AND FOR ENTRY OF FINAL JUDGMENT** |

This matter was last before the Court on May 2, 2006, for Ko, Han Yoon's ("Ko") motion for reconsideration of the Court's March 2, 2006 order (the "Order") granting D.Y. Corporation's ("DY's") Cross Motion for Summary Judgment on Third Party Claim and Jung, Young Boo's ("Jung's") Cross Motion for Summary Judgment. In the alternative, Ko requested that the Court certify the ruling as a final judgment for purposes of appeal. Plaintiff, the Estate of Soledad Ogumoro ("Ogumoro"), joined in Jung's opposition of Ko's motion.

Ko obtained rights to a lease of Ogumoro's property (the "Lease") after foreclosing on a mortgage agreement he held with Ogumoro's prior lessee, Jo, Suk Kon and buying the Lease at a judicial sale. The facts pertinent to the initiation of the lawsuit are recited in the February 14, 2006 order as well as the Court's January 20, 2006 order denying Ko's motion to dismiss.

Appearing on the briefs and/or at oral arguments were Thomas Clifford for Jung; Anthony Long for DY; Stephen Newman and Edward Manibusan for Ogumoro, and Joseph Horey for Ko.

## I. STANDARDS GOVERNING RECONSIDERATION MOTIONS

"Motions for reconsideration are governed by Commonwealth Rule of Civil Procedure 59(e) and are considered an extraordinary measure to be taken at the Court's discretion." *Camacho v. CNMI Department of Public Works*, No. 4-0238E (N.M.I. Supr. Ct. Oct. 3, 2005). Extraordinary measures include: (1) a need to correct a clear error or prevent manifest injustice; (2) the availability of new evidence not previously obtainable; or (3) an intervening change of controlling law. *Id.* In the instant motion, Ko asserts that there is a need to correct a clear error or prevent manifest injustice.

Plaintiff argues that timeliness is an additional consideration in this matter. Plaintiff cites Commonwealth Rule of Civil Procedure 59(e), which requires a motion for reconsideration to be filed and served "not later than 10 days after the entry of the judgment." Ko filed his motion March 29, 2006, more than ten days after the issuance of the March 2, 2006 Order.

In this case, Ko is not bound by the ten-day rule. Under Commonwealth Rule of Civil Procedure 54(b), "any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." Since the Order did not resolve all of the claims (as Plaintiff argues in its brief), Rule 54(b) governs reconsideration. Thus, Ko's motion is timely.

Before issuing the Order, the Court made a full analysis of all the evidence on record, particularly the Lease provisions. The Court acknowledges that it made this analysis despite the fact that the parties did not fully brief or argue all of the issues raised by the evidence. The Court will not penalize litigants for briefing these issues in the instant motion. However, the Court will only consider the facts and evidence before it at the time of the ruling. *See Camacho, supra.*

## II. REQUIREMENTS FOR FINAL JUDGMENTS

Generally, only final orders are immediately appealable. *Commonwealth v. Hasinto*, 1 N.M.I. 377, 385 (1990) ("We construe 1 CMC § 3102(a) to grant this Court appellate jurisdiction over Superior Court judgments and orders which are final."). Commonwealth Rule of Civil Procedure 54(b) provides that "any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties."

Rule 54(b) allows a court to direct the entry of a final judgment as to fewer than all of the claim or parties "upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment,"[1] but does not relax the finality required for a decision to be appealed. *Chan v. Chan*, 2003 MP 5, ¶ 12 citing *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 435 (1956). It simply allows an individual claim that has already been adjudicated to move forward to appeal. *Id.*

To determine whether an order is final, a court must examine whether the order fully informed the losing party of the extent of the remedy entered against it. *Pacific Amusement v. Villanueva*, 2005 MP 11, ¶ 9; *Westenberger v. Atalig*, 3 N.M.I. 471, 475 n.2 (1993). An order which establishes liability without fixing the amount of recovery may be final and immediately appealable ***only if*** the determination of damages will be "mechanical and uncontroversial," i.e., a ministerial task. *Pacific Amusement*, 2005 MP at ¶ 11 (finding that the calculation of attorneys fees was not a simple task, such that the order was not final). A judgment that rules on the issue of liability, but

[1] In *Ito v. Macro Energy, Inc*., 2 N.M.I. 459 (1992), the Supreme Court explained that, "There is no procedure for obtaining a certificate prescribed in Rule 54(b). In most cases a party simply will file a motion requesting the court to make the determination and direction required by the rule." In an appropriate case, the trial court "may consider the question sua sponte." *Ito, supra*, at 465, citing WRIGHT, MILLER, & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D §2660, at 122. Where the record is clear regarding liability, the Court need not always articulate its reasons for there being "no just cause for delay." *Teregeyo v. Lizama*, 5 N.M.I.84, 1997 MP 12 at p.3.

does not resolve whether a plaintiff is entitled to relief expressly prayed for, is not final. *Chan*, 2003 MP at ¶ 15, citing *Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 742-44 (1976).

## III. ANALYSIS

### A. Ko is bound by the terms of the Lease.

Ko asserts that he should not be bound by Paragraph 20.1 of the Lease, which provides for forfeiture in the event of nonpayment, because forfeiture does not run with the land. The Court agrees with Ko that, under common law, forfeiture typically does not run with land. *See* Ko's Memorandum at 5, citing *In Re 1345 Main Partners, Ltd.*, 215 B.R. 536, 541 (S.D. Ohio 1997); *Bank of Saipan v. CNG Financial Corp.*, 380 F.3d 836, 841-42 (5th Cir. 2004). However, in this case Paragraph 28 clearly alters the common law by providing that all aspects of the lease run with the land.[2]

Ko claims that it is manifestly unjust to bind him to one contractual provision that he did not sign on the basis of another contractual provision that he also did not sign. *See* Ko's Reply at 3. At the hearing, Ko argued that assumption must be express, and that he did not assume the Lease. The Court disagrees. *See Bird Hill Farms, Inc. v. U.S. Cargo & Courier Service, Inc*., 845 A.2d 900, 904 (Pa. Super. 2004) (through its actions, buyer impliedly assumed tenant's obligation under lease); *Gillette Bros. v. Aristocrat Restaurant*, 145 N.E. 748 (N.Y.1924) (where plaintiff went into possession of premises leased to another and paid rent to landlord, plaintiff was presumptively an assignee of the lease); *Mann v. Ferdinand Munch Brewery*, 121 N.E. 746 (N.Y. 1919) (a consent to assignment which a lease requires of the lessor may be implied from the acts and correspondence of the parties). By purchasing the Lease and initiating rental payments, Ko effectively agreed to be bound by the Lease.

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[2] Ko points out that the Court's order denying Ko's motion to dismiss did not clarify whether Paragraph 28 actually made all provisions of the Lease run with the land, or whether the Estate had simply stated a claim that all provisions run with the land. In his Reply Memorandum at 5, Ko states that, "There has never been a full airing of the Paragraph 28 issue in this case, and it is not remiss to have one now." The Court agrees that clarification was necessary.

At the May 2, 2006 hearing, Ko had a chance to air the issue. The Court finds that Paragraph 28 makes all provisions of the Lease run with the land.

**B. Ko failed to give notice of his assumption of the lease.**

Paragraph 6.1, governing notice of termination of the Lease, states that "All notices, demands, or requests from one party to another may be personally delivered or sent by mail . . . and shall be deemed to have been given at the time of personal delivery or mailing." In its Order, the Court found that the lessee's entitlement to notice of termination was contingent upon the lessee providing the landlord with written notice of his address. The Court based this finding on Paragraph 14, which states: "If the holder of any mortgage or security instrument shall give notice to Lessor of the existence thereof and the address of such holder, then so long as any such mortgage shall remain unsatisfied of record, the following provisions shall apply . . ."

Ko argues that the notice provisions of Paragraph 14 are premised on there being a mortgage that is unsatisfied. Ko asserts that when he came into the lease, he had already foreclosed on his mortgage, and had bought his interest to the Lease at a judicial sale. He was thus no longer a mortgagee, and Paragraph 14 has no application to him. If he was not a mortgagee but the new lessee of the Lease, Ko argues, then he was only bound by the notification requirements of Paragraph 6. The Court agrees with Ko's argument in this instance. However, the Court disagrees with Ko's argument that he complied with the requirements of Paragraph 6.

The visit of Ko's agent, Bernie Palacios, with Mrs. Ogumoro did not satisfy the requirement of "personal delivery" of the lessee's new address. Even if Paragraph 6 could be construed so loosely as to not require written notice, the notice provided by Bernie's "personal delivery" was insufficient to alert Ogumoro to the lessee's new address. The check was from Glory Corporation, not Ko. There is no evidence that Bernie indicated to Ogumoro that the address on the check was the new address to which notice was to be sent.

**C. The equities do not weigh in favor of Ko.**

Ko argues that questions of reasonableness are generally left to the trier of fact, and should not be decided in a motion for summary judgment. Ko's Memorandum at 5, citing *KTT Corp. v.*

*Tomokane*, 2003 MP 17 at ¶ 8 ("[Q]uestions of reasonableness are generally left to the trier of fact.").The Court disagrees. The case Ko relies on also states: "Thus, we disagree with Maria's contention that question of reasonableness may never be decided by a court entertaining a summary judgment motion." 2003 MP 17 at ¶ 8. *See also Williams v. Bramer*, 180 F.3d 699, 703 (5th Cir.1999)("objective reasonableness is a matter of law for the courts to decide, not a matter for the jury"); *Sirignano v. Chicago Ins. Co.*, 192 F.Supp.2d 199 (S.D.N.Y. 2002) (reasonableness of insured's actions may be determined by court as matter of law); *Reasonover v. Wellborn*, 195 F.Supp.2d 827 (E.D. Tex. 2001) (the objective reasonableness of the actions of a public official asserting a qualified immunity defense are to be determined by the court as a matter of law).

Ko notes that he had already invested $200,000 into the property. Ko argues that his unreasonableness in believing that he had five years in which to negotiate a new lease is not a sufficient reason to deprive him of the presumption against forfeiture. He cites *Bank of Saipan v. CNG Financial Corp.*, 380 F.3d 836, 841-42 (5th Cir. 2004) for the proposition that even "gross negligence" does not categorically preclude a party from recovering under equitable principles.

The Court recognizes the magnitude of Ko's investment. However, the Court finds it incredible that Ko would loan this amount of money, receive a mortgage in the Lease as collateral, and then purchase this Lease, without reading or understanding its provisions.

In allocating losses between multiple parties, courts place the burden on the party who was best able to prevent them. *See, e.g., Jefferson County Bank v. Hansen Lumber Co.*, 55 S.W.2d 54 (Ky. 1932) ("Equity will not postpone the interest of one who has omitted no duty devolving upon him, to the interests of another, whose negligence made it possible for the loss to occur."). Ko was this party. He assumed a lease, and it was up to him to follow the provisions of the written agreement by paying rent and properly notifying the landlord of his address. From an equitable point of view, the best way to fulfill expectations in society is to require parties to conform their behavior to the written agreements in which they have entered.

Finally, the Court recognizes a public policy interest in making businesspersons visible and accountable to CNMI laws. *See Rally, Inc. v. Hycenko, Civ.* No. 96-0895 (N.M.I. Supr. Ct. Nov.13, 1996) ("this court is concerned that moving defendants have taken advantage of business opportunities (legitimate or otherwise) presented by the CNMI Lottery, but have quickly seized upon their foreign status as Japanese citizens to delay effective service of process when asked to become legally accountable for these business activities"). While the CNMI welcomes investment, investors such as Ko have a responsibility to familiarize themselves with local laws and business practices.

## IV. STATUS OF THE CASE

The following issues have not been decided:

1. Whether Ko abandoned the property.
2. The amount of damages owed by any one party to the other.
3. Allocation of court costs.

The following issues ***have*** been decided:

1. Ko breached the Lease with Ogumoro by failing to pay rent.
2. Ogumoro properly terminated the Lease.
3. By implication, Ko will be liable to Ogumoro for breach of lease.

The resolution of these issues moots the following claims:

1. Ogumoro's action to declare Ko's interest in the property forfeited.
2. Ko's counterclaims against Ogumoro.
3. Ko's third-party claims against Jung's sublessees.
4. Jung's sublessees' cross-claims against Jung for indemnification.
5. Jung's claim against Ogumoro for indemnification.

Further, the issue of abandonment is relevant only to the issue of whether the lease between Ogumoro and Ko has terminated. Since the Court already determined that the lease has terminated, the Court need not decide on the issue of abandonment.

## V. CONCLUSION

Ko's motion for reconsideration, or in the alternative, the certification of a final judgment, are denied. The parties may schedule a status conference to resolve the remaining issues.

SIGNED this 11th day of May, 2006.

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JUAN T. LIZAMA, Associate Judge