



By Order of the Court, Presiding Judge **ROBERT C. NARAJA**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

FOR PUBLICATION



E-FILED
CNMI SUPERIOR COURT
E-filed: Jun 25 2013 02:30PM
Clerk Review: N/A
Filing ID: 52987185
Case Number: 13-0110-CV
N/A

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

ZENG, JIN DONG and HUANG, XIU) CIVIL ACTION NO. 13-0110
FANG d/b/a ZENG’S AMERICAN)
CORPORATION and THE BANK OF)
THE FEDERATED STATES OF)
MICRONESIA,)

Plaintiffs,

v.

RAMON P. CRISOSTOMO, CARMEN C.)
CRISOSTOMO and DOES 1-10,)

Defendants.

**ORDER GRANTING
PRELIMINARY INJUNCTION**

I. INTRODUCTION

THIS MATTER came before the Court on Friday, June 14, 2013 on Plaintiffs’ motion for preliminary injunction. Plaintiffs Zeng, Jin Dong (“Zeng”) and Huang, Xiu Fang (“Huang”) d/b/a Zeng’s American Corporation (“Zeng’s”) and the Bank of the Federated States of Micronesia (“FSM Bank”) (Zeng’s and FSM Bank as “Plaintiffs”) were represented by Robert T. Torres, Esq. and Gregory J. Koebel, Esq. Defendants Ramon P. Crisostomo and Carmen C. Crisostomo (“Defendants”) were represented by Robert H. Myers, Esq.

//

1 **II. BACKGROUND**

2 Defendants are fee-simple owners of real property in Lower Navy Hill, Saipan, legally
3 described as Lot No. 023 D 104 (“Property”). In or around July 2007, Defendants leased this
4 Property to Yoon Tae Hyung (“Yoon”) and Yang Kyung A (“Yang”), doing business as L&Y
5 Corporation (“L&Y”), for 55 years commencing July 11, 2007 and ending on July 11, 2062. In
6 relevant part, the lease (“ground lease” or “Ground Lease Agreement”) gave L&Y the rights to:

- 7 (1) quiet enjoyment of the Property;
8 (2) use the Property for any lawful purpose;
9 (3) assign or sublet the Property in whole or in part with notice to the lessors; and
10 (4) use the premises, and any improvements thereon, as collateral for a loan.

11 Ground Lease Agreement §§2-5. The ground lease also guaranteed that these same rights would be
12 provided to all assignees and party successors. *Id.* § 7. Lastly, the ground lease stated that each
13 provision ran with the land and applied to and bound all successors and assignees. *Id.* at § 16.

14 L&Y used this Property to operate a grocery store know as Happy Market II. L&Y also
15 maintained a long-term commercial lease for a property in As Lito, on which they operated Happy
16 Market I. On September 2, 2009, they subleased the Property to Lanlan Wang, who operated the
17 grocery market as Twins Supermarket (“Twins”).¹ This sublease agreement was for a term of eight
18 years.

19 On or about November 29, 2010, L&Y applied for a commercial loan in the amount of
20 \$443,080.80 through FSM Bank. In order to meet its obligation, L&Y provided the bank with a
21 mortgage and an Assignment of Leases and Rents as partial security for the loan. Assignment of
22 Leases and Rents. FSM Bank recorded the Assignment of Leases and Rents on November 29, 2010

23 _____
24 ¹ For clarification, note that Twins is the commercial business currently located on the property that is the subject of this
litigation. Happy Market I is located on the As Lito property, and Happy Market II’s name was changed to Twins after
Lanlang Wang began operating the market.

1 as File No. 10-1944 in the Books and Records of the Commonwealth Recorder's Office. L&Y
2 retained the right and license to occupy the Property as a landlord; to collect, use, and enjoy the
3 rents, issues, and profits payable under any lease; and to enforce the covenants of any lease of the
4 Property. FSM Bank was allowed to collect rent from any tenants subleasing the Property from
5 L&Y. Defendants did not object to this loan or assignment.

6 In February 2011, L&Y agreed to sell the As Lito commercial grocery market and inventory
7 and its remaining leasehold interests in the Property and in the As Lito market to Zeng's for
8 \$370,000 cash via an asset purchase agreement. As part of this agreement, Zeng's agreed to submit
9 a commercial loan application to consolidate and pay off L&Y's existing commercial loans with
10 FSM Bank. Yoon and Yang would also assign the Twins' sublease to Zeng's. Defendants were
11 notified of these transactions via letter dated March 28, 2011 ("March 2011 letter"). Defendant,
12 Ramon C. Crisostomo, acknowledged his receipt of this letter. March 2011 letter.

13 L&Y assigned the ground lease to Zeng's. Assignment of Lease by Lessee. A copy of that
14 Assignment was attached to the March 2011 letter and contains a reference to the FSM Bank loan.
15 Three months later, on June 30, 2011, Defendants executed an Estoppel Certificate to assist Zeng's
16 in obtaining a loan through FSM Bank. Estoppel Certificate. This Certificate acknowledged that:
17 (1) the ground lease was assigned to Zeng and Huang; (2) the ground lease was in full force and
18 effect; and (3) that any mortgage given by Zeng and Huang to secure the loan would cover only
19 Zeng's leasehold interest in the Property. In short, the asset purchase agreement transferred all of
20 L&Y's assets to Zeng's, including the right to collect rents from the Twins sublease. As security
21 for the loan, Zeng's renewed L&Y's original mortgage and entered into a reassignment of rents
22 from the Twins sublease. Mortgage.

23 On or about May 7, 2013 ("May 2013 letter"), Defendants sent notice of their intent to
24 challenge Zeng's compliance with various provisions of the ground lease. May 2013 letter. The

1 May 2013 letter alleged that Zeng’s violated various terms of their Ground Lease Agreement
2 because they had (1) misused the Property by failing to use loaned funds for development and
3 improvement of the Property, (2) failed to provide notice of the assignment of rentals to FSM Bank,
4 (3) failed to use the loan funds exclusively for the development and improvement of the Property,
5 (4) assigned Property interests to creditors, (5) failed to provide notice of the sale and assignment of
6 interests in the ground lease, and (6) attempted to change the ground lease. In their May 2013
7 letter, Defendants claimed to have been damaged in the amount of \$100,000. They demanded that
8 Zeng’s cure its breach by (1) paying that sum or providing Defendants with a written accounting of
9 loaned funds and (2) revoking the assignment of rentals to FSM Bank. Defendants stated that they
10 would terminate the Ground Lease Agreement and retake possession of the Property if Plaintiffs
11 failed to meet their terms within 30 days.

12 On June 4, 2013, Plaintiffs filed an application for temporary restraining order and
13 preliminary injunction (“motion”), seeking court intervention to prevent Defendants from
14 terminating the Ground Lease Agreement. The Court granted the temporary restraining order
15 (“TRO”) on June 5, 2013. The parties came in to argue their cases on June 14, 2013, after which
16 the Court extended the TRO until this Order could be issued.

17 In its motion, Zeng’s contends that it “has not defaulted and is in compliance with all the
18 terms of the [ground] [l]ease, including the payment of rent.” Motion p. 3. Notwithstanding these
19 facts, Defendants have threatened to terminate the ground lease, thereby jeopardizing Zeng’s
20 leasehold interest and FSM Bank’s security interest. Defendants, on the other hand, claim that
21 Zeng’s has violated several terms of the Ground Lease Agreement and that its loans have devalued
22 the Property.

23 //

24 //

1 **III. LEGAL STANDARD**

2 “[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be
3 granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v.*
4 *Armstrong*, 520 U.S. 968, 972 (1997). The purpose of a preliminary injunction is to preserve the
5 status quo pending a final determination on the merits. *Pacific Am. Title Ins. & Escrow (CNMI),*
6 *Inc. v. Anderson*, 6 NMI 15 ¶ 8 (1999). The status quo is the last uncontested status prior to the
7 pending controversy. *Id.* In deciding whether to grant a preliminary injunction, Commonwealth
8 courts consider (1) whether the plaintiff has a strong likelihood of success on the merits; (2) the
9 level of the threat of irreparable harm to the plaintiff if the requested relief is not granted; (3) the
10 balance of harms between the parties and (4) the public interest. *Villanueva v. Tinian Shipping &*
11 *Transp., Inc.*, 2005 MP 12 ¶ 20.

12 **IV. DISCUSSION**

13 **1. Plaintiff’s likelihood of success**

14 In determining likelihood of success on the merits, courts look to the substantive law at
15 issue. *Roho, Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir. 1990). At a minimum, petitioners must
16 show that their likelihood of success is more than negligible.² The Court will analyze each of
17 Defendants’ alleged breaches³ in order to assess Plaintiffs’ likelihood of success.

18 **a. Claim No. 1**

19 Defendants’ first alleged breach by Plaintiffs states:
20 _____

21 ² Courts differ as to the movant’s exact burden of persuasion. Some jurisdictions require the movant to demonstrate a
22 “more than negligible” chance of success. *See, e.g., Barbecue Marx, Inc. v. 551 Ogden, Inc.*, 235 F.3d 1041, 1046 (7th
23 Cir. 2000) (reversing where movant did not have a more than negligible change of prevailing on the merits); *see also*
Compact Van Equipment Company, Inc. v. Leggett & Platt, Inc., 566 F.2d 952, 954 (5th Cir. 1978) (holding that to
prevail on a preliminary injunction, the movant’s likelihood of success must be more than negligible). Other
jurisdictions require a greater showing. *See, e.g., Abdul Wali v. Coughlin*, 754 F.2d 1015, 1025 (2nd Cir. 1985) (stating
that the movant needs to show that the probability of prevailing is better than fifty percent).

24 ³ Each of the alleged breaches of the Ground Lease Agreement is contained in the May 2013 letter, which is included as
Exhibit H to Plaintiffs’ Complaint.

1 “You have misused Lot No. 023 D 104 as collateral for one or more loans with
2 FSM Bank, but failed to use any of those loaned funds from FSM Bank in
3 developing and improving Lot No. 023 D 104, which means Section 3 of the
4 Lease was violated”.

5 Section 3 of the Ground Lease Agreement states:

6 “The Premise may, during the term of this Lease, be used by the Lessees for any
7 lawful purpose; provided, that it is expressly understood and agreed that Lessees
8 is [*sic*] leasing the premise with the express intention of developing the premise.
9 Lessees shall not use or permit the premise or any part thereof to be improved,
10 developed, used, or occupied in any manner or for any purpose that is in any way
11 in violation of any valid law, ordinance, or regulation or any applicable
12 government authority. Furthermore, Lessees shall not maintain, commit or permit
13 the maintainence [*sic*] or commission of any nuisance as now or hereinafter
14 defined by any statutory or decisional law applicable to the premise on the
15 premise or any part thereof.”

16 Section 3 of the ground lease allows the use of the Property for “any lawful purpose”. It
17 does not, in any way, discuss loaned funds or the way in which loaned funds must be used. There
18 has been no claim rendered against Plaintiffs that the property is being used for an illegal purpose.
19 Therefore, Plaintiffs will likely defeat Defendants’ claim for breach of contract in relation to this
20 claim.

21 **b. Claim No. 2**

22 Defendants’ second alleged breach states:

23 “You failed to give written notice to us as the lessors when you sold and assigned
24 all your interests in Lot No. 023 D 104 and the Lease to FSM Bank, which means
Section 4 of the Lease was violated”.

Section 4 of the ground lease states:

“Lessors and Lessees have agreed that Lessees may assign or sublet the demised
premise under this lease in whole or in part with notice to Lessors.”

As an initial remark, the Court points out that this provision relates to the assignment or
sublet of the Property to another. However, Zeng’s has not assigned or subleased the Property to

1 FSM Bank. Rather, they have entered into a mortgage agreement, whereby sublet rental income
2 has been assigned to FSM Bank as security for that debt.

3 In order to get a full understanding of the relevant facts, the Court takes notice of the events
4 leading up to Zeng's mortgage agreement with FSM Bank. L&Y held leasehold interests in two
5 pieces of property: the Property which is the subject of this litigation located in Lower Navy Hill
6 and a property in As Lito. L&Y took out loans with FSM Bank to develop those properties,
7 building grocery markets on both parcels of land. When Zeng's bought out L&Y's interests, it
8 assumed those loans. Zeng's did not receive any disbursement of funds from those loans but rather
9 entered into a new loan agreement with FSM Bank to become the owner of those loans.

10 L&Y sent Defendants the March 2011 letter informing them that they had sold and assigned
11 their leasehold interest in the Property to Zeng's. A document entitled "Assignment of Lease by
12 Lessee" was attached to that letter. Contained within the Assignment is a statement discussing the
13 loan with FSM Bank:

14 "Assignees [Zeng's] recognize that Assignors [L&Y] have sub-leased the
15 premises to Lanlan Wang...through a lease recorded on September 09, 2009,
16 Commonwealth Recorder File No. 09-1830. Assignees further agree to apply the
17 proceeds from the lease payments received from Lanlan Wang in the amount of
18 Five Thousand Dollars (\$5,000) per month to the Bank of FSM's savings account
19 at First Hawaiian Bank, Gualo Rai branch, Account No. 17-903020."

20 Thus, Defendants were put on notice of both the sublease agreement with Lanlan Wang and that
21 Zeng's maintained a loan with FSM Bank that was effectively being paid by the rental proceeds
22 earned from the sublease on the Property.

23 Furthermore, despite Defendants' claims, Zeng's did not sell its interest in the ground lease
24 to FSM Bank, nor did it assign all of its interest to FSM Bank. Rather, it merely entered into a loan
25 agreement whereby it assigned its subleased rental income to FSM Bank. Next, Defendants signed
26 an Estoppel Certificate, which states in the introductory paragraph that Zeng's maintained a

1 mortgage on the Property with the bank. This document put them on notice for the second time that
2 Zeng's maintained a mortgage against its leasehold interest. That Certificate also states that Zeng's
3 was "not in default under said Lease in performance of any obligations thereunder, nor has any
4 event occurred which through the lapse of time if not cured or corrected would constitute, create or
5 cause default under said Lease." Estoppel Certificate ¶ 4. Defendants signed that Certificate on
6 June 25, 2011 and are therefore estopped from claiming that Zeng's is in default for any acts
7 occurring prior to that date.

8 Defendants claimed at the hearing that they signed this document but did not read through it.
9 However, "one who assents to a writing is presumed to know its contents and cannot escape being
10 bound by its terms merely by contending that he did not read them; his assent is deemed to cover
11 unknown as well as known terms." Restatement (Second) of Contracts § 157 cmt. b (1981). *See,*
12 *for example, PAC United Corp., Ltd. (CNMI) v. Guam Concrete Builders*, 2002 MP 15, 28 (2002),
13 where the CNMI Supreme Court cites this rule. The law requires individuals to read and fully
14 understand documents before signing them, and a future claim that one did not read or did not
15 understand that document does not invalidate it. Thus, Defendants effectively guaranteed that
16 Zeng's was not in default or violation of the lease for any action occurring up to June 25, 2011.

17 Finally, after reviewing the commitment letter sent to Zeng's by the bank, the mortgage, and
18 the Assignment of Leases and Rents in full, it is clear that Zeng's had not sold or assigned all of its
19 interests in the Property to FSM Bank. Zeng's is still the leaseholder to the Property, and it is still
20 the landlord to any sublease agreement on the Property. The only interest that has been assigned is
21 the rental income earned from the sublease, and that assignment is valid for only a seven year term,
22 which is significantly less than the duration of the ground lease. Defendants seem to focus their
23 efforts on small pieces of the contract read as individual obligations instead of as part of a whole.
24 When reviewing the contract in entirety, the terms and obligations paint a very different picture

1 from the one Defendants have put forth. However, the declarations made by both Zeng's and FSM
2 Bank should alleviate any of Defendants' concerns about FSM Bank's interests in the Property.
3 Plaintiffs have fully clarified the nature of the mortgage agreement, along with FSM's rights and
4 interests, and would therefore be estopped from asserting different interests in any future litigation.

5 Here again, Plaintiffs are likely to succeed against this breach of contract claim.

6 **c. Claim No. 3**

7 Defendants' third alleged breach states:

8 "You failed to use any of those loaned funds from FSM Bank to solely develop
9 and improve Lot No. 023 D 104, which means Section 5 of the Lease was
violated".

10 Section 5 of the ground lease states:

11 "Lessees may use the demised premise and improvements thereon as collateral for
12 a loan for the purpose of developing or improving the premises; provided,
13 however, that the term of any loan shall not extend beyond the term of this
Ground Lease Agreement."

14 First, the Court points out that Section 5 does not state that loaned money must be used
15 "solely" for the development and improvement of the Property. In fact, Defendants' counsel
16 actually conceded this point at the hearing.

17 Defendants are incorrect in their assertion that this loaned money was not used toward the
18 development and improvement of the property. When Zeng's bought out L&Y's interests in the
19 ground lease, it took over L&Y's mortgage, the money from which was used to develop this
20 Property and the As Lito property. Zeng's did not receive *any* funds from FSM Bank but merely
21 bought out the prior mortgage. Thus, the money owed on Zeng's loan did, in fact, go towards the
22 development of the Property regardless of whether or not Zeng's did the actual development. Thus,
23 Zeng's is likely to prevail against this alleged breach.

24 //

1 **d. Claim No. 4**

2 Defendants' fourth alleged breach states:

3 "You assigned all your interests in Lot No. 023 D 104 and the Lease to your
4 creditors, which means that Section 13(c)[b] of the Lease was violated".

5 Section 13 of the ground lease is entitled "Termination of Lease". Section 13(c)(b) states:

6 "if Lessees shall become bankrupt or makes [*sic*] an assignment for the benefit of
7 its creditors, or file any debtor proceedings of any kind or character whatsoever
8 under any provision of the Federal Bankruptcy Act seeking any readjustment,
arrangement, postponement, composition or reduction of its debts, liabilities or
obligations"

9 Defendants claim that Plaintiffs have somehow violated Section 13(c)(b) by assigning all of
10 their interests to creditors. However, as discussed above, Zeng's has not assigned all of its interests
11 in the ground lease to FSM Bank.

12 Defendants have mischaracterized the meaning of this section of the Ground Lease
13 Agreement. "Assignment for the benefit of creditors" is a legal term of art dealing specifically with
14 bankruptcy and insolvency matters, as evidenced by this Section's very own language, which
15 addresses the Federal Bankruptcy Act. *See*, for example, the brief description in Restatement
16 (Second) of Property: Landlord & Tenant, § 20.1, bankruptcy 16(a). *See also Southern Research*
17 *Corporation v. Caliendo*, 540 P.2d 179 (Ariz. Ct. App. 1975) for a general description of the
18 procedure for this type of action.

19 Defendants have not claimed that Zeng's is in the process of bankruptcy or insolvency
20 proceedings with respect to this property. On the contrary, FSM Bank stated at the hearing that
21 Zeng's is up to date on its mortgage payments, and Zeng's has stated – without refute – that it is
22 current on its rental dues to Defendants. There is no current bankruptcy action, nor is there any
23 evidence that a bankruptcy action is forthcoming. Thus, Zeng's is likely to succeed against this
24 claim as well.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

e. Claim No. 5

Defendants’ fifth alleged breach states:

“You failed to give us as the lessors written notice of the sale and assignment of your interests in Lot No. 023 D 104 and the Lease, which means the notice provisions of the Lease were violated”.

This claim is virtually identical to the one stated in Claim No. 2. The Court thus refers the parties to the analysis under that claim and will address a secondary claim asserted by Defendants under this provision: that Zeng’s has somehow devalued the Property because of its mortgage. The mortgage agreement makes it quite clear that the arrangement is between FSM Bank, Zeng’s Corporation, and Zeng and Huang individually. Defendants and the Property itself are not, in any way, implicated in this mortgage agreement. The agreement is specific to the ground lease and rental incomes derived from any *sublease* arrangement made between Zeng’s and third parties. Finally, both Zeng’s and FSM Bank have assured Defendants and this Court that the mortgage agreement does not affect Defendants’ interests or the equity value of the Property. They would, therefore, be estopped from making any contrary assertion in any future litigation. Thus, Zeng’s is likely to succeed against this claim.

f. Claim No. 6

Defendants’ final alleged breach states:

“You and FSM Bank have attempted, and still attempt, to change the Lease by virtue of your assignments of leases and rents to FSM Bank and the Estoppel Certificate for FSM Bank, which means Sections 18[b](2) and 13(c)[b] were violated.”

Section 18 is entitled “Condemnation”, and section (b)(2) states:

“This instrument contains the entire agreement between the parties, and no statement, promises, or inducements made by either party or agent or either party that is not contained in this written contract shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing signed by the parties and indorsed [*sic*] hereon.”

1 Section 13(c)(b), as detailed above, deals with an assignment for the benefit of creditors and
2 is not at all relevant to this allegation.

3 Zeng's and FSM Bank have not, in any way, altered the terms of the ground lease. Their
4 mortgage agreement is for the benefit of Zeng's and FSM Bank alone and does not implicate
5 Defendants, as they are not parties to that mortgage agreement. It cannot override, alter, or interfere
6 with the Ground Lease Agreement between Zeng's and Defendants. Any such change in the
7 agreement between Zeng's and Defendants would necessarily require the express approval of
8 Defendants and Zeng's.

9 Additionally, the Estoppel Certificate does not purport to change any agreement made
10 between Zeng's and Defendants and in fact specifically states that the mortgage agreement applies
11 only the Zeng's interest and actually protects Defendants' rights. Paragraph 6 of that document
12 states: "That Bank shall and may rely upon the statements herein contained in loaning money to
13 Borrower [Zeng's] to be secured by a mortgage on the *rights of the Lessee* under the Lease."
14 (Emphasis added.) Paragraph 7 states: "That any such mortgage given by Lessee to Bank *will*
15 *cover only the Leasehold interest of the Lessee* under the said Lease, *and does not and shall not*
16 *include the Lessor's interest* under such Lease." (Emphasis added.)

17 Finally, to any extent that any terms were changed, Defendants signed off on those changes
18 when they affixed their signatures to the Estoppel Certificate.

19 Hence, Plaintiffs will likely succeed against Defendants' claim with respect to this final
20 allegation of breach as well.

21 **2. Threat of irreparable harm**

22 Irreparable harm is generally viewed as the type of harm that an action at law for monetary
23 damages is ill-equipped or unable to fix. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391,
24

1 393-94, (2006). The threat of loss must be more than mere speculation. *Grand River Enter. Six*
2 *Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (“To satisfy [] irreparable harm [the] injury
3 [must be] neither remote nor speculative, but actual and imminent, and one that cannot be remedied
4 if a court waits until the end of trial to resolve the harm.”) (Internal quotation marks omitted.)

5 In this instance, the threatened harm to Plaintiffs is very real. If this Court fails to issue the
6 requested preliminary injunction and Defendants carry out their threat to retake the Property,
7 Zeng’s will lose out on all incomes generated from this business venture. That real property,
8 whether personal or commercial, is considered “unique” only compounds the harm that would
9 befall Zeng’s. See, for example, *Dixon v. Thatcher*, 742, P.2d 1029, 1030 (Nev. 1987) (“real
10 property and its attributes are considered unique and loss of real property rights generally results in
11 irreparable harm”); *Beal Bank USA v. In re Windmill Durango Office, LLC*, 481 B.R. 51, 68 (2012)
12 (where the court considers commercial real property unique). Furthermore, such a loss would likely
13 impair Zeng’s ability to pay FSM Bank. In that instance, FSM Bank would have little or no remedy
14 for its losses because it cannot place a lien on the Property itself but only against the Zeng’s
15 leasehold interest. Thus, both sets of plaintiffs are likely to experience a significant financial loss if
16 the ground lease is terminated.

17 **3. Balance of harms to the parties**

18 The balance of harms element requires the Court to consider whether Defendants will suffer
19 more injury if a preliminary injunction issues than Plaintiffs will face absent injunctive relief. “In
20 each case, courts must balance the competing claims of injury and must consider the effect on each
21 party of the granting or withholding of the requested relief.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 24
22 (2008) (citations and internal quotation marks omitted).

23 Here, the risk of harm to Plaintiffs is quite high should the preliminary injunction be denied,
24 while any harm to Defendants is negligible at best. Zeng’s is operating a business on the leased

1 property. Rental income generated from that property is used to pay Zeng's mortgage to FSM
2 Bank. Thus, if Defendants are not restrained from terminating the ground lease, both Zeng's and
3 FSM Bank will lose substantial monetary funds, much of which may never be recoverable.
4 Moreover, property – even commercial property – is considered unique by courts. Therefore,
5 monetary damages cannot fully compensate for such a loss.

6 Defendants, on the other hand, have little to no risk of harm if the ground lease continues
7 during the pendency of this case. The Property is being maintained, and Defendants have been
8 receiving the full value of the agreed upon monthly rental fee. Defendants' claimed that the
9 Property has been devalued because of Zeng's mortgage. However, as previously discussed, that
10 claim is without merit. The mortgage attaches only to Zeng's leasehold interest in the Property and
11 does not attach to any equity interest in said Property. Defendants have not produced any evidence
12 that they have lost anything, nor have they produced evidence that would suggest they are at risk for
13 any tangible harm by allowing the ground lease to continue under the agreed upon terms. To the
14 contrary, Defendants will benefit from the continuance of this lease agreement because they will
15 continue to collect the monthly rental dues, and Plaintiffs will continue to maintain the Property.

16 **4. Public interest**

17 Finally, the Court finds that upholding the Ground Lease Agreement is in the best interests
18 of the public. Assuring that landlords honor the terms of lease agreements is of the utmost
19 importance, particularly in a community such as this where long-term commercial leasehold
20 agreements are common. Should landlords be allowed to frivolously terminate lease agreements,
21 business people would be afraid to rent space, develop land, and operate commercial businesses in
22 the Commonwealth, and banks would be unwilling to lend to businesses operators. These types of
23 consequences would only harm an already fragile economy.

24 //

1 **V. CONCLUSION**

2 Based on the foregoing, Plaintiff's Motion for Preliminary Injunction is **GRANTED**.
3 Defendants Ramon P. Crisostomo and Carmen C. Crisostomo, along with their agents, servants,
4 employees, attorneys, and those in active participation or concert with Defendants, are hereby
5 **RESTRAINED** from terminating or in any other manner interfering with Zeng's rights to
6 Possession and Quiet Enjoyment pursuant to the Ground Lease Agreement for Lot 023 D 104
7 between the Crisostomos as Lessors and Zeng's as Lessee.

8 **SO ORDERED** this 25th day of June, 2013.

9
10 /s/
ROBERT C. NARAJA, Presiding Judge