



FOR PUBLICATION



E-FILED
CNMI SUPERIOR COURT
E-filed: Oct 31 2016 04:20PM
Clerk Review: N/A
Filing ID: 59763706
Case Number: 15-0018-CV
N/A

By order of the Court, Presiding Judge Roberto C. Naraja

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

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

WON BAE SHON,)
)
Plaintiff,)
)
v.)
)
HEE JONG CHOO, SOO WOAN JUN,)
YAN HUA LI, JING ZHU SUN, LAN LAN)
WANG, and DOES One to Five,)
)
Defendants.)
_____)

CIVIL ACTION NO. 15-0018

ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO
DEFENDANTS LAN LAN WANG
AND YAN HUA LI

I. INTRODUCTION

This matter came before the Court on October 15, 2016, at 9:00 am in Courtroom 202A. The Court heard arguments on Plaintiff Won Bae Shon's motion for partial summary judgment. Plaintiff was represented by attorneys Michael W. Dotts and Claire Kelleher-Smith. Defendant Lan Lan Wang was represented by attorney Charity R. Hodson. Defendant Yan Hua Li was represented by attorney Matthew T. Gregory. Pro Se Defendant Soo Woan Jun did not appear. Defendants Hee Jong Choo and Jing Zhu Sun are in default, pursuant to NMI R. Civ. P. 55(a), as of January 25, 2016.

In his motion for partial summary judgment, Plaintiff requested the Court grant the remedy of quiet title to its asserted leasehold interest in Lot No. 045 A 182 (including the house on the land)

1 against any adverse leasehold interest in the same property asserted by Soo Woan Jun, Lan Lan
2 Wang, and Yan Hua Li.

3 On or about September 19, 2008, Plaintiff executed a 55-year lease with Thomas B. Castro
4 for a house located on Lot No. 045 A 182. Plaintiff alleges that, a little more than five years later, in
5 January 2014, he learned that a series of property transactions resulted in Jing Zhu Sun's presence in
6 his residence. Plaintiff alleges that he was not privy to the series of transactions that resulted in this
7 discovery, and seeks to reclaim his leasehold interest in Lot 045 A 182 against the five known
8 defendants in this case: Hee Jong Choo, Soo Woan Jun, Yan Hua Li, Jing Zhu Sun, and Lan Lan
9 Wang. About one year later, on January 30, 2015, Plaintiff filed his complaint against Defendants.¹
10 Plaintiff alleges (1) a quiet title action against all Defendants; (2) slander of title against Soo Woan
11 Jun, Hee Jong Choo, and Lan Lan Wang; (3) unjust enrichment against Soo Woan Jun, Hee Jong
12 Choo, and Lan Lan Wang; and (4) trespass against Yan Hua Li.

13 Plaintiff now seeks partial summary judgment on his quiet title action against any claimed
14 adverse leasehold interests by the five known Defendants. Hee Jong Choo and Jing Zhu Sun have
15 defaulted in this civil action. Partial summary judgment as to the quiet title action has been entered
16 against Soo Woan Jun.² Therefore, the question before the Court is whether summary judgment
17 should be granted as to the adverse interests in the leasehold interest asserted by Lan Lan Wang and
18 Yan Hua Li. Both have opposed Plaintiff's motion for partial summary judgment.

19 Based on the submitted filings, oral arguments by counsels, and the applicable law,
20 Plaintiff's motion for partial summary judgment is denied as his quiet title action against Lan Lan
21 Wang and Yan Hua Li. Plaintiff has not met his burden to show that there is an absence of evidence
22 as to Lan Lan Wang and Yan Hua Li's affirmative defense of laches.

23 _____
¹ The first amended complaint was filed on June 9, 2015.

24 ² *Won Bae Shon v. Hee Jong Chu*, Civ. No. 15-0018 (NMI Super. Ct. Oct. 31, 2016) (Order Granting Pl.'s Partial Mot. for Summary J. Against Def. Soo Woan Jun at 2).

1 **II. FACTUAL BACKGROUND**

2 The following material facts exist without substantial controversy.

3 **A. 55-Year Lease in Lot No. 045 A 182**

4 On September 19, 2008, Plaintiff, a Korean citizen, executed a 55-year lease with Thomas
5 B. Castro, the fee simple owner of Lot No. 045 A 182. In exchange for the leasehold interest in the
6 property, which contained a house, Plaintiff promised to pay \$100,000 for consideration. The lease,
7 which prohibited assignments, was recorded with the Commonwealth's Recorder's Office on
8 November 19, 2010 ('Original Lease').

9 **B. The Series of Forgeries**

10 The Original Lease was then later subject to an amendment, and the property interests were
11 purportedly assigned to Soo Woan Jun. As the following paragraphs explain, the conveyance
12 instruments were products of no less than four acts of forgery by Soo Woan Jun and Hee Jong
13 Choo.

14 **1. The Forged Lease**

15 Two years after the execution of the 2008 Lease, on September 23, 2010, a lease agreement
16 leasing the house was recorded in the Commonwealth Recorder's Office ('Forged Lease'). The
17 wording of the recorded lease agreement was virtually identical to that of the Original Lease, except
18 that the lessor was changed from Thomas B. Castro to Plaintiff. The starting date of the Forged
19 Lease was on September 19, 2009, exactly one year after the Original Lease's starting date of
20 September 19, 2008. Plaintiff's signature appeared on the Forged Lease, as the lessor; and Soo
21 Woan Jun, as the lessee—dated October 19, 2009. The conveyance instrument was notarized on
22 November 25, 2009.

1 Plaintiff never signed the Forged Lease, and never authorized anyone to amend or assign the
2 ground lease on his behalf. Plaintiff was in Korea on both October 19, 2009, the date the instrument
3 was executed, and November 25, 2009, the date that the instrument was notarized.

4 Soo Woan Jun admits that he and Hee Jong Choo prepared the Forged Lease, forged
5 Plaintiff's signature, and recorded the lease agreement. Soo Woan Jun admits that the purpose of the
6 forgery was to use the Forged Lease as collateral to borrow money from Lan Lan Wang.

7 **2. The Forged Mutual Rescission and Assignment**

8 Two months after the Forged Lease was recorded, on November 19, 2010, (1) a mutual
9 rescission and release, rescinding the Forged Lease, and (2) an assignment assigning the leasehold
10 interest in Lot No. 045 A 182 from Plaintiff to Soo Woan Jun, were simultaneously recorded with
11 the Commonwealth Recorder's Office ('Forged Mutual Rescission and Assignment'). Both
12 instruments listed Plaintiff and Soo Woan Jun as parties, and contained their signatures, as executed
13 on November 17, 2010. Both instruments were notarized by Mariano Koyama Pangelinan, on the
14 same day. The public notary document states that Plaintiff personally appeared before Pangelinan;
15 but Plaintiff was in Korea on on November 17, 2010, the date that the instruments were executed
16 and notarized.

17 Plaintiff did not sign either of these instruments, and did not authorize anyone to sign the
18 Forged Mutual Rescission and Assignment or authorized anyone to sign them on his behalf. Soo
19 Woan Jun also admits that he and Hee Jong Choo forged Plaintiff's signature, prepared, and
20 recorded the Forged Mutual Rescission and Assignment. Soo Woan Jun also admits that he and Hee
21 Jong Choo paid Pangelinan for notarizing the forged signatures, without verification of identity.
22 Soo Woan Jun also admits that his motive for forging the instruments was to borrow money from
23 Lan Lan Wang.

24

1 **3. The Amendment to the Original Lease**

2 Just five days after the Forged Mutual Rescission and Assignment was recorded, on
3 November 22, 2010, an amendment to the Original Lease was recorded with the Commonwealth
4 Recorder's Office ('Amendment to the Original Lease'). The Amendment to the Original Lease
5 listed Thomas B. Castro and Plaintiff as parties, and contained their signatures, dated November 22,
6 2010. This instrument was also notarized by Pangelinan, on the same day. The recorded instrument
7 amended the Original Lease to permit lease assignments.

8 But Thomas B. Castro neither saw nor signed the Amendment to the Original Lease.
9 Plaintiff did not sign the instrument or authorize anyone to sign the instrument on his behalf.
10 Plaintiff was, again, in Korea on November 22, 2010, the date that the instrument was notarized.
11 Soo Woan Jun admits that he and Hee Jong Choo forged Plaintiff's signature on this instrument,³
12 and again paid Pangelinan for notary services, without verification of identity. Soo Woan Jun
13 admits that he prepared this instrument after he attempted to borrow money from Lan Lan Wang
14 using the Forged Mutual Rescission and Assignment.

15 **C. Soo Woan Jun's Property Interest in Lot No. 045 A 182 Becomes Collateral for a Loan**

16 The same day that the Amendment to the Original Lease was recorded, on November 22,
17 2010, Soo Woan Jun and Hee Jong Choo showed the instrument to Lan Lan Wang. Soo Woan Jun
18 and Lan Lan Wang then executed a loan agreement; where, in exchange for a \$35,000 principal
19 loan, Soo Woan Jun's remaining 53-year property interest in Lot No. 045 A 182 would serve as
20 collateral. Soo Woan Jun made one payment towards the loan, and then stopped all payments—
21 short of the principal loan amount and the agreed upon interest payments. This loan agreement was
22 recorded in the Commonwealth Recorder's Office, on March 3, 2011.

23

24 ³ There are no admissible facts as to whether someone forged Thomas B. Castro's signature, and no assumptions are made to this effect.

1 Four days later, on March 7, 2011, a lease assignment for the transfer of the property
2 interest in Lot No. 045 A 182 from Soo Woan Jun to Lan Lan Wang was recorded in the
3 Commonwealth Recorder's Office.

4 **D. Lan Lan Wang Assigns Her Property Interest to Yan Hua Li**

5 On March 12, 2013, Lan Lan Wang recorded an assignment of her property interest to Yan
6 Hua Li, for consideration in the amount of \$110,000. Yan Hua Li entered and started renovations
7 on the house, located on Lot No. 045 A 182. Plaintiff then filed his complaint, on January 30, 2015.

8 **III. LEGAL STANDARD**

9 Under NMI R. Civ. P. 56, a moving party has the initial burden to show that he or she is
10 entitled to summary judgment. *Furuoka v. Dai-Ichi Hotel (Saipan), Inc.*, 2002 MP 5 ¶ 22. If the
11 moving party is the plaintiff, he or she must show that the undisputed facts establish every element
12 of his or her claim. *Id.* If the defendant is the moving party, he or she must either show that the
13 undisputed facts establish every element of an asserted affirmative defense or that the plaintiff
14 cannot establish his or her prima facie case. *Id.* ¶¶ 22, 23. But where the nonmoving party bears the
15 burden of proof, the moving party is required to show that there is an absence of evidence to
16 support the nonmoving party's case. *See id.* ¶ 23.

17 If the moving party satisfies the initial burden, the nonmoving party must respond by
18 showing that there is a genuine issue of material fact. *Id.* ¶ 24. To sustain their burden, the
19 nonmoving party must come forward with more than "the mere existence of some alleged factual
20 dispute" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). In considering the
21 motion, the court views facts and inferences in the light most favorable to the nonmoving party.
22 *Fujie v. Atalig*, 2014 MP 14 ¶ 7. After evaluating the merits of the motion, the Court may also enter
23 summary judgment in favor of either the moving party or the nonmoving party. *CDA v. Tenorio*,

24

1 2004 MP 22 ¶ 24 (explaining that the court may sua sponte enter summary judgment for the
2 nonmoving party); *see also* NMI R. Civ. P 56(b).

3 IV. DISCUSSION

4 Plaintiff moves for partial summary judgment on his quiet title action in his favor on the
5 ground that forged conveyance instruments are void and cannot transfer a valid property interest.
6 The Court denies Plaintiff's motion for partial summary judgment for the following reasons.

7 A. Quiet Title Action and Forged Conveyance Instruments

8 A quiet title action is a proceeding where the claimant seeks a declaration from the court
9 that an allegedly adverse interest in property is invalid. *Estate of Faisao v. Tenorio*, 4 NMI 260, 264
10 (1995). The claimant carries the burden of asserting a present interest in the subject property. *Fusco*
11 *v. Matsumoto*, 2011 MP 17 ¶ 21. The claimant must prove their case on the strength of his or her
12 own title, and not on any perceived defect of the defendant's. *Sablan v. Iginoif*, 3 CR 860, 872 n.9
13 (NMI Super. Ct. 1989). Where the parties seek to establish superior title from a common source,
14 each party must plead or prove his or her own claim to the property in question. *Tenorio*, 4 NMI at
15 264.

16 The governing law in the Commonwealth in cases of forged conveyance instruments is
17 found under the Restatement (Second) of Contracts. *See* 7 CMC § 3401. Under the applicable rules,
18 "If a misrepresentation as to the character or essential terms of a proposed contract induces conduct
19 that appears to be a manifestation of assent by one who neither knows nor has reasonable
20 opportunity to know of the character or essential terms of the proposed contract, his conduct is not
21 effective as a manifestation of assent." Restatement (Second) of Contracts § 163. Furthermore, " a
22 good faith purchaser may acquire good title to property if he takes it from one who obtained
23 voidable title by misrepresentation but not if he takes it from one who obtained 'void title' by
24 misrepresentation." *Id.* cmt. c.

1 In other words, where a conveyance instrument, a contract, is signed by someone (other than
2 the promisor or promisee) in an act of forgery, and under circumstances where the promisor or
3 promisee had no knowledge or had no reasonable opportunity to know the essential contract terms,
4 the resulting contract is void ab initio for lack of mutual assent. The resulting fraudulent
5 conveyance instrument does not pass a valid property interest to subsequent purchasers, even if the
6 purchases were made in good faith. *See, e.g., Faison v. Lewis*, 32 N.E.3d 400, 403 (N.Y. 2015).⁴

7 Here, the undisputed facts establish that Plaintiff's property interest in Lot No. 045 A 182
8 was acquired by a 55-year lease from Thomas B. Castro, the fee simple owner of Lot 045 A 182.
9 The Original Lease was executed by the parties on September 19, 2008, and recorded in the
10 Commonwealth Recorder's Office, on November 19, 2010. The undisputed facts also establish that
11 all other conveyance instruments were products of forgery by Soo Woan Jun, where Plaintiff and
12 Thomas B. Castro never saw the instruments or authorized signatures on their behalf. Accordingly,
13 the Court concludes that these instruments were void ab initio and, assuming that there are no
14 applicable affirmative defenses, that no property interest would pass to the other parties contesting
15 title, Lan Lan Wang and Yan Hua Li.

16 In making this ruling, the Court also addresses Lan Lan Wang and Yan Hua Li's argument
17 that there is a material dispute as to whether Soo Woan Jun forged Plaintiff's signature. However,
18 neither Lan Lan Wang nor Yan Hua Li has articulated admissible facts that, when interpreted in
19 their favor, would in good faith dispute Soo Woan Jun's admission that he took part in the forgery.
20 For example, Yan Hua Li argues that that the Original Lease could be the product of forgery
21 because Thomas B. Castro executed the conveyance instrument on September 27, 2008, eight days
22 after Plaintiff executed the same conveyance instrument, on September 19, 2014. But no fraud is

23 ⁴ The harsh result of application of this well-established principle of real property law is typically protected through the
24 purchase of title insurance policies for forgery. *E.g., Wutzke v. Bill Reid Painting Serv., Inc.*, 151 Cal. App. 3d 36, 44
n.5 (1984). Moreover, 1 CMC § 3711(a)'s protection for bona fide purchasers has no application in this case because
there was no conveyance of title when the conveyance instrument is forged.

1 alleged as to the Original Lease, and even if the Original Lease were the product of forgery, that
2 would not speak to whether the later conveyance instruments were *not* the result of forgery.
3 Accordingly, the Court sees no reason to depart from its factual finding that Soo Woan Jun forged
4 Plaintiff's signature on all conveyance instruments executed after the Original Lease.

5 Moreover, while Lan Lan Wang and Yan Hua Li both argue that additional discovery is
6 necessary on the forgery issue, the pair has not followed the procedures set forth in NMI R. Civ. P.
7 56(f). Under this rule, a party must show by affidavit why they cannot present facts essential to
8 justify the party's opposition to the motion for summary judgment. NMI R. Civ. P. 56(f). Neither
9 Lan Lan Wang nor Yan Hua Li have presented affidavits of that nature, and have not raised NMI R.
10 Civ. P. 56(f) in their opposition briefs. Moreover, there were no reasons provided to the Court as to
11 why discovery had not taken place for close to a year after the latest answer was filed, on October 5,
12 2015.⁵ Therefore, their requests for additional discovery on this issue are denied.

13 **B. Affirmative Defenses**

14 In her opposition, Lan Lan Wang argues that Plaintiff's quiet title action should be denied on
15 the following three affirmative defense grounds: (1) laches, (2) waiver, and (3) unclean hands.
16 Similarly, Yan Hua Li argues that Plaintiff's quiet title action should be denied on the following five
17 affirmative defense grounds: (1) statute of limitations, (2) laches, (3) waiver, (4) unclean hands, and
18 (5) ratification. Affirmative defenses may be properly brought at the summary judgment stage.
19 *Sablan v. Elameto*, 2013 MP 7 ¶ 17. But where the defendant has not brought a cross-motion for
20 summary judgment on his affirmative defenses, the plaintiff's initial burden is to show an absence
21 of evidence to support the affirmative defense. *See Furuoka*, 2002 MP 5 ¶ 23. The defendant then
22 carries the burden to show that there is a disputed material fact as to the affirmative defense. *See*
23 *id.* ¶ 24.

24 ⁵ Lan Lan Wang filed her answer on October 5, 2015. Yan Hui Li filed her answer on June 29, 2015.

1 **1. Statute of Limitations**

2 Yan Hua Li argues that the two-year statute of limitations for fraud under 7 CMC § 2503(d)
3 bars Plaintiff's relief. There are two problems with Yan Hua Li's argument as a matter of law. First,
4 7 CMC § 2503(d)'s two-year statute of limitations applies generally to tort actions. *Zhang Gui Juan*
5 *v. Commonwealth*, 2001 MP 18 ¶ 26. Plaintiff does not bring a tort claim for fraud against Yan Hua
6 Li—with the appropriate remedy being damages. Second, determination of the applicable statute of
7 limitations depends on the nature of the suit, and not the plaintiff's pleaded theory or ultimate
8 outcome. *Aldan v. Pangelinan*, 2011 MP 10 ¶¶ 20–21 (determining that a quiet title action was,
9 instead, a suit to void a court judgment). Here, resolution of Plaintiff's quiet title action is decided
10 on application of contract formation law, under the Restatement (Second) of Contracts. Plaintiff's
11 desired outcome of recovery of his real property interest in Lot No. 045 A 182 results from the
12 fraudulent conveyance instruments being declared void ab initio under contract formation law.
13 Therefore, the controlling statute of limitations is the six-year statute of limitations under 7 CMC §
14 2505. *See Century Ins. Co. v. Guerrero*, 2009 MP 16 ¶ 7 (holding that actions based on breach of
15 contract must be filed within the six-year statute of limitations under 7 CMC § 2505).

16 Accordingly, the first time that Plaintiff could have filed his quiet title action, construed as a
17 question of contract formation, would have been November 17, 2010, the date that the forged
18 assignment from Plaintiff to Soo Woan Jun was executed. Therefore, absent application of the
19 delayed discovery rule or an application of the equitable tolling doctrine, Plaintiff had until
20 November 17, 2016 to file his complaint. Plaintiff filed his complaint on January 30, 2015—more
21 than a year and nine months remaining until the earliest expiration of his cause of action.
22 Accordingly, the statute of limitations defense is inapplicable to this case as a matter of law. Yan
23 Hua Li's statute of limitations defense is hereby decided in Plaintiff's favor.

24

1 **2. Laches**

2 Both Lan Lan Wang and Yan Hua Li raise the affirmative defense of laches. In order to
3 prevail on the equitable defense of laches, the balance of two factors must be in the proponent's
4 favor: (1) an inexcusable delay in the assertion of a known right; and (2) the prejudice suffered by
5 the proponent. *In re Estate of Rios*, 2008 MP 5 ¶ 9. The application of laches is a mixed question of
6 law and fact. *See id.* ¶ 8. Where the cause of action was brought within the applicable statute of
7 limitations, there is a presumption that the complaint was brought without unreasonable delay.
8 *Lyons v. Partnership, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 797–98 (4th Cir. 2001).
9 Prejudice may be in the form of economic loss caused by the delay in filing the complaint. *Lake*
10 *Caryonah Improv. Ass'n v. Pulte Home Corp.*, 903 F.2d 505, 510 (7th Cir. 1990) (explaining that
11 prejudice may be found when there is a marked appreciation or depreciation in the value of
12 property).

13 Here, Plaintiff is presumed to have brought his quiet title action without unreasonable delay
14 because he filed the complaint within the six-year statute of limitations. However, the Court is not
15 persuaded that the case does not require a trial on the issue of prejudice. Lan Lan Wang claims that
16 she hired workers and "fixed up the house, fixed the water pump, cleared the jungle around the
17 house, fixed the concrete gate in front, replaced the power lines, and cleaned and painted the
18 house." Wang Aff. ¶ 16. Yan Hua Li claims that she paid \$1,100.00 for her property rights to Lot
19 No. 045 A 182. Li Aff. ¶ 5. She also admits to making improvements to the house. Li Ans. ¶ 2.
20 These admissible facts demonstrate a genuine factual issue for trial as to any prejudice suffered by
21 Lan Lan Wang and Yan Hua Li, in the form of economic loss. Therefore, Plaintiff's motion for
22 partial summary judgment is denied on this ground.

23
24

1 **3. Remaining Affirmative Defenses**

2 Because Plaintiff's motion for partial summary judgment is denied in this matter, the Court
3 need not address the remaining issues of Lan Lan Wang and Yan Hua Li's affirmative defenses of
4 waiver, unclean hands, and ratification. *See Commonwealth v. Togawa*, 2016 MP 13 ¶ 30 n.7
5 (declining to reach additional issues raised by appellants).

6 **V. CONCLUSION**

7 For the foregoing reasons, Plaintiff's motion for partial summary judgment is **DENIED** as to
8 his quiet title action against Lan Lan Wang and Yan Hua Li. In addition, Yan Hua Li's statute of
9 limitations defense is **DECIDED** in Plaintiff's favor.

10 The parties are now **ORDERED** to appear before the Court for an Initial Case Management
11 Conference & Mediation Assessment Hearing (ICMC&MAH), issued under NMI R. ADR §
12 1007(b), to be held on November 16, 2016, at 9:00 a.m. in Courtroom 202A.

13
14 **IT IS SO ORDERED** this 31st day of October, 2016.

15
16 /s/
17 Roberto C. Naraja
18 Presiding Judge

19
20
21
22
23
24