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

PEDRO R. DELEON GUERRERO et. al.,

) Civil Action No. 94-388

Plaintiffs,

v.

) **SUMMARY JUDGMENT
ORDER**

NANSAY MICRONESIA, INC., et. al.,

Defendants.

Plaintiffs Pedro R. DLGuerrero (“Pedro”), Herman R. DLGuerrero (“Herman”) and Antonio R. DLGuerrero (“Antonio”), collectively “Guerreros”, initiated this action to declare that any and all claims pursuant to an agreement for the lease or transfer of certain lots violated Article XII and a warranty deed and option contract to be void and without legal basis. Defendants Nansay Micronesia, Inc. (“Nansay”) and Ana DLG. Little (“Little”) moved for a partial summary judgment on Plaintiffs’ Article XII claim. Plaintiffs moved for partial summary judgment to rescind and cancel the option contract of the agreement. In response, Defendant Nansay filed a cross motion for summary judgment to recover \$20,000.00 it paid to Herman under the option contract. Having heard the matter on October 11, 1995 and considered the submissions, the Court now renders its decision.

FOR PUBLICATION

1 I. FACTS

2 On September 14, 1987, an "Agreement for Purchase and Lease of Real Property"
3 ("Agreement") was executed by Defendants Nansay and Little, and Plaintiffs Herman and Antonio^{1/}.
4 Defendant's Statement of Undisputed Facts and Memorandum of Points and Authorities in Support
5 of Defendants' Motion for Partial Summary Judgment. Herman's spouse Marina Lucy P.
6 DLGuerrero ("Lucy") also signed the Agreement. Defendants' Exhibit 3.

7 Pursuant to the Agreement, a ground lease for Tract No. 21698, Lot H-328-4, and Lot H-328-
8 1 for fifty-five years and for a total rental payments in the amount of \$1.5 million was executed on
9 March 4, 1988. The lease was signed by Herman for himself and Antonio, Lucy, Pilar M.
10 DLGuerrero ("Pilar") for herself and for Pedro^{2/} as landlord and Nansay as tenant. Plaintiffs' Exhibit
11 C. Also pursuant to the Agreement, a "Warranty Deed with the Assignment of Lease" ("Deed") was
12 executed by Herman for himself and for Antonio, Lucy, Pilar for herself and for Pedro (collectively
13 "Grantors") to grantee Little on March 4, 1988. Plaintiffs' Exhibit B. Little is a person of Northern
14 Marianas Descent ("NMD").

15 Article I of the Agreement provided for the lease to Nansay which is not a NMD corporation
16 and sale of the fee simple to Little of three parcels, designated as Tract No. 21698, Lot H-328-4, and
17 Lot H-328-1 (collectively "Sale Parcel"), owned by the Guerreros. Pedro, either jointly or separately
18 claims an interest in the Sale Parcel. Defendants' Statement of Undisputed Facts and Memorandum
19 of Points and Authorities, para. 1 p. 2.

20 Article 2 of the Agreement grants Nansay the exclusive option to lease for fifty-five years,
21 while providing Little with exclusive right to purchase three parcels of real property described as H-
22 328-2, Lot H-329-R3, and Lot H-329-3 (collectively "Option Parcel") in fee simple subject to the
23 lease for fifty-five years . Article 2.1.2 of the Agreement provides that the option shall be for a term
24 ending three months after the date of execution of the Agreement. On or about December 10, 1987,

25
26 _____
^{1/} Herman executed the Agreement through a power of attorney.

27 ^{2/} Pilar executed the ground lease for Pedro through a power of attorney.

1 Nansay exercised its option to lease the Option Parcel by tendering the earnest money of \$20,000.00
2 to Herman. Affidavit of Herman R. DLGuerrero para. 3. The Agreement states that the time of
3 closing on the option, shall be within sixty days from the date of exercise of the option. Agreement,
4 Article 2.3. Article 2.3 also provides that in the event of any title defect or Guerreros failure to
5 perform any other condition of the Agreement, Nansay may extend the time for closing for a
6 reasonable time to permit the Guerreros to cure or remove any defects prior to closing. However,
7 subsequent to Nansay's exercise of the option, no closing or extension of time for closing the option
8 occurred. Affidavit of Herman R. DLGuerrero para. 4 & 5.

9 Rather, Nansay's attorney wrote to Herman on October 7, 1987 notifying him of certain
10 exceptions in the title insurance company's report which affected both the Sale and Option Parcels.
11 In the same letter, Nansay's attorney stated that "closing will be delayed until you can cure each
12 defect." Defendants Response to Plaintiff's Motion for Partial Summary Judgment and Defendant's
13 Cross Motion, para. 3 p. 2. On November 13, 1987, Nansay's attorney again wrote to Herman
14 wherein he memorialized a telephone conversation concerning the defects of title and the attorney
15 authorized an extension of the closing to give Herman additional time to cure. *Id.* para. 4 p.3. On
16 the date Nansay exercised its option, Nansay's attorney asked to be advised whether Herman expected
17 to be able to clear the exceptions to the title to the Option Parcel within the sixty days time period.
18 *Id.* para. 5. Herman never responded to Nansay's request. Instead, the title defects in the Option
19 Parcel went uncured and closing was never set. *Id.* para. 6.

20 Pedro is one of the owners of record of Lot H-328-2, but Pedro did not sign the Agreement
21 either personally or through an attorney in fact. Plaintiffs' Memorandum of Points and Authorities
22 p. 4. Moreover, Plaintiffs argue that since seven years and ten months have passed, any attempt by
23 the Defendants to enforce the agreement at this stage is barred by the six-year statute of limitations
24 found at 7 CMC § 2505. In response, Nansay argues that if the Guerreros' claim to extinguish
25 Nansay's option is timely, Nansay's claim is likewise timely and is entitled to recover under the
26 equitable doctrine of recoupment. Defendant's Response to Plaintiff's Motion for Partial Summary
27 Judgment and Defendant's Cross Motion p. 9.

1 Plaintiffs argue that the lease violates Article XII by extending control of the subject properties
2 beyond the fifty-five year lease term, thus is void *ab initio*. In response, Defendants questioned the
3 Guerreros' standing to raise such an issue due to their current lack of any interest in the Sale Parcel.
4

5 II. ISSUES

6 1. Assuming, arguendo that the Ground Lease for Tract No. 21698, Lot H-328-1, and Lot H-
7 328-4 violates Article XII of the Commonwealth Constitution, do Plaintiffs have standing to raise
8 such claim?

9 2. Whether to grant Plaintiffs' motion for partial summary judgment to cancel and rescind
10 the option contract under the Agreement.

11 3. Whether to grant Nansay's cross motion for summary judgment to recoup the \$20,000.00
12 plus interest.
13

14 III. ANALYSIS

15 A. SUMMARY JUDGMENT STANDARD

16 Summary judgment is entered against a party if, viewing the undisputed facts in the light most
17 favorable to the non-moving party, the Court finds as a matter of law that the moving party is entitled
18 to the relief requested. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172 (1990). Once the moving party
19 meets its initial burden, the burden shifts to the non-moving party to demonstrate a genuine issue of
20 material fact. *Id.*
21

22 B. STANDING

23 Nansay argues that the Plaintiffs have no standing to complain of the Ground Lease as a result
24 of the conveyance of fee simple title and the assignment of the Ground Lease to Little. Nansay cites
25 *Warth v. Seldin*, 422 U.S. 490, 95 S.Ct. 2197 (1975) and *McGowan v. Maryland*, 466 U.S. 420, 81
26 S.Ct. 1101 (1961) which held that a party does not have standing to complain of an injury to a third
27 party. Furthermore, if an injury is done to the fee simple title to property, standing to complain of
28

1 the injury rests with the owner. *Garret v. Beers*, 155 P. 2 (1916). A fourth case cited by Nansay
2 held that if a party has conveyed his interest in property and retained no salable or disposable interest
3 in the land, he loses standing to complain of any further disparagement on the title. *Bennet v. Pace*,
4 731 P.2d 33 (Wyo. 1987). Defendant's Statement of Undisputed Facts and Memorandum Points and
5 Authorities in Support of Defendant's Motion Partial Summary Judgment, pp. 9-10.

6 In this case, the Guerreros executed a fifty-five year Ground Lease of Tract No. 21698, Lot-
7 H-328-1, and Lot H-328-4 to Nansay on March 4, 1988. On the same day, the Guerreros sold and
8 conveyed their reversionary interest in the leased premises to Little by warranty deed. The Guerreros
9 assigned all duties and responsibilities of the lessor under the Nansay lease to Little, under the terms
10 of the warranty deed. Even if the Court were to find that the lease violates Article XII and is void
11 *ab initio*, it does not render the warranty deed illegal. The execution of the warranty deed was carried
12 out pursuant to the terms agreed by the parties conveying a long term interest to an NMD, it does not
13 violate Article XII. In *Manglona v. Kaipat*, a deed of gift which conveyed real property to two
14 grantees, one of whom is an NMD and the other of whom is not was held to be void *ab initio* as to
15 the non-NMD only. *Manglona v. Kaipat*, 3 N.M.I. 322 (1992). Our Supreme Court, however, ruled
16 that the exact same deed conveyed a valid one-half interest to the NMD co-grantee. *Id.* at 335. The
17 Court was able to uphold a conveyance to a NMD person even though it was contained in the very
18 same document with a transaction which did violate Article XII. *Id.* In this case, the ground lease
19 and conveyance of the reversionary interest by warranty deed are two separate documents. Even if
20 this Court were to find the lease is void *ab initio*, it does not affect the validity of the warranty deed.

21 Thus, if the Court assumes that the lease does violate Article XII, it has no choice but to
22 render the lease void *ab initio*. Flowing from such a ruling the Court must provide for the equitable
23 relief mandated by Public Law 8-32 ("Pub.L. 8-32"). Pub.L. 8-32 provides that when a court
24 determines that a real property transaction is void *ab initio* under Article XII,

25 the court shall award an equitable adjustment to any person directly
26 and adversely affected by the judgment who loses possession of or
loses any interest in real property as a direct result of the judgment.

27 The equitable adjustment shall take the form of...money...and shall

1 be incorporated into the court's final judgment or order.
2 2 CMC § 4951(a)(Supp. April 1994). Under this scenario, the lease being void *ab initio*, there is
3 nothing for Nansay to convey back to the Guerreros. However, the Guerreros must return \$1.5
4 million lease money to Nansay in order to prevent unjust enrichment because there is no lease between
5 the Guerreros and Nansay. The Guerreros who bargained to lease their property for \$1.5 million and
6 sell their reversionary interest for \$66,810 will end up without the property and only realize a benefit
7 of \$66,810.00 as a result of the entire transaction. The Court feels that this approach would be
8 grossly unfair and inequitable.

9 Had the Guerreros not sold their reversionary interest in the leased premises, there would be
10 no standing issue and the leased premises would revert to them. Because Guerreros sold their
11 reversionary interest to Little, the leased premises goes by default to Little who has legal title to it.
12 Therefore, it is Little who has standing, not Guerreros, to raise any Article XII claims because Little
13 is the owner of the property. If indeed the Ground Lease did violate Article XII and is void *ab initio*,
14 Little's remainder interest as the fee holder would immediately become a possessory interest. The
15 Guerrero's would receive nothing.

16 The Court agrees with Defendants that Plaintiffs lack standing to assert that the Ground Lease
17 violates Article XII. It is Little, the purchaser of the Guerreros' reversionary interest in the leased
18 property, who has standing to raise any Article XII violations, not the Guerreros.

19
20 **C. CANCEL AND RESCIND OPTION CONTRACT**

21 Nansay concedes that it cannot seek specific performance under the option contract because
22 Pedro who has an interest in at least one of the Option Parcels was not a signatory to the option
23 contract. Nansay agrees that Pedro's request to rescind and cancel the option should be granted,
24 subject, however, to a judgment in favor of Nansay in the amount of \$20,000.00 plus interest from
25 December 10, 1987 against Plaintiffs Antonio and Herman. Nansay contends that such judgment
26 should operate as a lien and encumbrance against Herman's interest in the Option Parcel. Defendants'

1 Response to Plaintiffs' Motion for Partial Summary Judgment and Defendants' Cross Motion, pp. 10-
2 11. Nansay's contention of an automatic lien has no basis in law or the unenforceable contract.

3 Recoupment is a defense that goes to the foundation of plaintiff's claim by deducting from
4 plaintiff's recovery all just allowances or demands accruing to the defendant with respect to the same
5 contract or transaction. *Pennsylvania R. Co. v. Miller*, 124 F.2d 160, 162 (5th Cir. 1941), cert.
6 denied, 316 U.S. 676, 62 S.Ct. 1047, 86 L.Ed. 1750 (1942). Recoupment is in the nature of a
7 defense and is never barred by the statute of limitations, so long as the main action itself is timely.
8 *Oceania Line, Inc. v. Herman's Modern Bakery*, 1 CR 1050, 1056 (1984) (citing *Bull v. U.S.*, 295
9 U.S. 247 (1935)). The Court agrees that the timeliness of Guerreros' claim to extinguish Nansay's
10 option protects Nansay's claim for recoupment from the statute of limitations. Accordingly,
11 Plaintiffs' motion to rescind and cancel the option contract should be granted.

12
13 **D. RECOUPMENT OF THE \$20,000.00 PAID FOR THE OPTION**

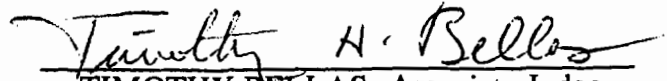
14 **1. Return of \$20,000.00.** Under a contract for the sale of land, wherein the making of the
15 deed and the payment of certain part of the purchase price were dependent and concurrent conditions,
16 and time was of the essence of the contract, vendor could not put the vendee in default until he
17 tendered his deed. *Lemle v. Barry*, 183 P. 148 (Ca. 1919). Here, there was adequate notice, before
18 and after the option was exercised, from Defendants that Guerreros needed to clear title to the Option
19 Parcel. The Guerreros never notified Nansay that the title defects in the Option Parcel had not been
20 cured and never requested an extension of the closing date.

21 Article 4.2 of the Agreement provides that if the Guerreros satisfy all of the conditions
22 contained in the Agreement, and Nansay or Little fail to make the required payments within the times
23 provided, then the Guerreros may terminate the Agreement and shall be entitled to retain the earnest
24 money deposit as and for liquidated damages for Nansay's or Little's failure and default. Guerreros
25 failed to provide good title on the Option Parcel, thus, Nansay is entitled to the return of the earnest
26 money deposit. The Guerreros never conferred any benefit on Nansay and are therefore not entitled
27 to retain the deposit.

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4. Nansay's request for pre-judgment interest is DENIED.

So ORDERED this 4 day of March, 1996.


TIMOTHY-BELLAS, Associate Judge