

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

ROY S. REYES,

Plaintiff,

v.

JONG YE CHOI KIM, SEONG SOO
KIM, AKIYAMA YUKISHIEGI,
NITTO SAIPAN, INC., LEE KYUNG
SOO, and LEE KWANG SOO,

Defendants.

Civil Action No. 96-1050

**WRITTEN DECISION
FOLLOWING TRIAL**

AKIYAMA YUKISHIEGI,
and NITTO SAIPAN, INC.

Cross-Plaintiffs,

v.

JONG YE CHOI KIM, SEONG SOO,
KIM, KEE KYUNG SOO, and
LEE KWANG SOO,

Cross-Defendants.

I. PROCEDURAL BACKGROUND

THIS MATTER came before the Court for trial commencing on August 4, 1998. Kenneth L. Govendo, Esq. appeared on behalf of Plaintiff David A. Wiseman, Esq. appeared on behalf of

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[p. 2] Defendants/Cross-Plaintiffs Akiyama Yukishiegi and Nitto Saipan, Inc. After each side presented their case, the parties stipulated to submitting the case on the record.¹

II. FINDINGS OF FACTS

Upon the close of the evidence, there were certain facts which were undisputed.

1. In June 1988, Plaintiff Roy S. Reyes and Defendant Jong Ye Choi Kim entered into a lease agreement whereby Defendant Jong Ye Choi Kim leased Plaintiff's land in Dandan for a term of 55 years with monthly lease payments starting at \$2,500.²
2. In July 1988, Defendant Jong Ye Choi Kim assigned the lease to Defendant Seong Soo Kim.³
3. In October 1990, Defendant Seong Soo Kim executed a power of attorney authorizing Young So Kim to sublease the Dandan property.⁴
4. In November 1990, Young So Kim, as attorney-in-fact for Defendant Seong Soo Kim, executed a partial assignment of the lease to Defendant Akiyama Yukishiegi.⁵ The partial assignment of lease and the notary acknowledgment were drafted by counsel for Defendant Yukishiegi.
5. In July 1996, counsel for Plaintiff served notice on the defendants in possession that lease payments had not been made since May 1995. In accordance with paragraphs 14 [p. 3] and 15 of the original lease agreement, Plaintiff terminated the lease and demanded that the

¹At trial, the parties also stipulated to two other facts: (1) that Defendants Yukishiegi and Nitto Saipan, Inc. are the only remaining defendants, [On July 3, 1997, the Court granted a default judgment as against Defendants Jong Ye Choi Kim and Seong Soo Kim] and (2), that all documents attached to Plaintiff's Complaint were true and correct copies of the original documents.

²See Lease dated June 17, 1988, attached as Exhibit A to Plaintiff's Complaint. The monthly lease payments increased by 10% every 5 years.

³See Assignment dated July 27, 1988, attached as Exhibit B to Plaintiff's Complaint.

⁴See Power of Attorney dated October 23, 1990, attached as Exhibit C to Plaintiff's Complaint.

⁵See Partial Assignment of Lease dated November 5, 1990, attached as Exhibit D to Plaintiff's Complaint.

property be vacated.⁶

6. Plaintiff did not receive any rental payments from May 1995 through December 1997. The rent amount payable under the lease during this time frame was \$2,750 per month.⁷
7. In December 1997, Plaintiff and Defendants Yukishiegi and Nitto Saipan, Inc. stipulated to entry of a partial judgment whereby it was adjudged that Defendants Yukishiegi and Nitto Saipan had no interest in the subject property by virtue of the November 1990 partial lease assignment.⁸

In addition, there were factual issues which were disputed and which the Court now resolves on the basis of the record before the Court:

8. Defendant Yukishiegi acknowledged the partial lease assignment on behalf of Defendant Nitto Saipan, Inc. as president of the corporation.
9. As president of Defendant Nitto Saipan, Inc., Defendant Yukishiegi bound the corporation contractually by acknowledging the partial lease assignment in his corporate capacity.
10. The language on page 3 of the partial lease assignment provides that the assignee would assume all the duties and covenants owed by the assignor under the original lease. Therefore, Defendant Nitto Saipan, Inc., by and through its agent Defendant Yukishiegi, is responsible for the entire amount of rent due under the original lease for the period of May 1995 through December 1997.

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III. CONCLUSIONS OF LAW

1. The certificate of acknowledgment attached to the partial assignment clearly indicates that Defendant Yukishiegi acknowledged the partial assignment as president for Defendant Nitto Saipan, Inc. As such, if a certificate of acknowledgment is complete and regular on its face, the facts stated in the certificate are presumed to be true. Chun Chew Pang v.

⁶See Letter dated July 18, 1996, from Kenneth L. Govendo to Defendants Jong Ye Choi Kim, Seong Soo Kim, Akiyama Yukishiegi, Lee Kyung Soo, and Lee Kwang Soo, attached as Exhibit D to Plaintiff's Complaint.

⁷The parties stipulated to this fact at trial.

⁸See Stipulation to Entry of Partial Judgment and Order, filed January 5, 1998.

Chun Chew Kee, 412 P.2d 326, 332 (Hawaii 1966).

2. The president of a corporation is the head and general agent of the corporation and may act for it in matters that are within the corporation's ordinary course of business or incidental to it. Bell Atlantic Tricon Leasing Corporation v. DRR, Inc., 443 S.E.2d 374, 376 (N.C.App.1994). As such, the president has the authority to bind the corporation contractually. *See* DuSesoi v. United Refining Company, 540 F.Supp. 1260, 1272 (W.D. Pa.1982). The Court finds that Defendant Yukishiegi, as president of Defendant Nitto Saipan, Inc., has bound the corporation contractually by acknowledging the partial assignment in his corporate capacity.
3. A reasonable reading of page 3 of the partial lease assignment establishes that the assignor assumes all the liabilities under the original lease and not just a portion thereof. As such, Defendant Nitto Saipan, Inc., by and through its agent Defendant Yukishiegi, is responsible for the entire amount of the lease payments for the period of May 1995 through December 1997. The partial assignment should be construed most strongly against the party who prepared it, or whose attorney prepared it. Underwood v. Sterner, 387 P.2d 366, 370 (Wash.1964). *See also*, Brazelton v. Jackson Drug Company, Inc., 796 P.2d 808, 810 (Wyo.1990)(any doubts as to the meaning of a lease should be resolved against the party who drafted it).

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IV. CONCLUSION

The Court concludes that Defendant Akiyama Yukishiegi acknowledged the partial lease assignment as president of Defendant Nitto Saipan, Inc. As such, Defendant Yukishiegi bound the corporation contractually for the obligations under the partial assignment. Moreover, the Court finds that the language in the partial lease assignment evidences that Defendant Yukishiegi, as an agent of Defendant Nitto Saipan, Inc., assumed all of the obligations of Defendant Seong Soo Kim arising under the original lease, and not just a portion thereof. Thus, the Court finds that Defendant Nitto Saipan, Inc., by and through its agent Defendant Yukishiegi, is responsible for the entire amount of rent due for the period of May 1995 through December 1997, or \$55,000. In addition, the Court awards Plaintiff reasonable attorney's

fees and costs, according to proof.

So ORDERED this 09 day of November, 1998.

/s/ Timothy H. Bellas
TIMOTHY H. BELLAS, Associate Judge