

IN THE  
SUPREME COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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**JING YU GUAN STEPHANSON,**  
Plaintiff-Appellee,

v.

**VICENTE I. TEREGEYO,**  
Defendant-Appellant.

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**SUPREME COURT NO. 04-0014-GA**  
**SUPERIOR COURT NO. 01-0497-CV**

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**Cite as: 2008 MP 13**

Decided July 7, 2008

Renaldo O. Yana, Saipan, Northern Mariana Islands, for Defendant-Appellant.  
S. Joshua Berger Saipan, Northern Mariana Islands, for Plaintiff-Appellee.

BEFORE: ALEXANDRO C. CASTRO, Associate Justice; JESUS C. BORJA, Justice Pro Tem; ROBERT J. TORRES, JR., Justice Pro Tem

CASTRO, J.:

¶ 1 Vicente I. Teregeyo (“Teregeyo”) appeals the trial court’s decision vesting Jing Yu Guan Stephanson (“Stephanson”) with leasehold rights in a disputed piece of property and granting Stephanson attorney’s fees and costs. We hold that the conveyance of the property violates Article XII of the Commonwealth Constitution and that the trial court’s decision to award attorney’s fees should have been made upon completion of all litigation, including appellate proceedings. As such, we REVERSE these portions of the trial court’s decision, VACATE the award of attorney’s fees, and REMAND the matter to the trial court for re-determination of fees. However, we hold that the trial court correctly ruled that the contract conveying the property is supported by adequate consideration, and that the trial court correctly determined that the clause in question can be severed. Absent the clause, the lease does not violate Article XII. Accordingly, the trial court’s ruling that the property conveyance is supported by adequate consideration and that the clause at issue may be severed is AFFIRMED.<sup>1</sup>

## I

¶ 2 Teregeyo is the fee simple owner of Lot 005 I 320 (the “premises”), a piece of real property located in Koblerville. On May 12, 1992, Teregeyo and his wife, Ana I. Soares (“Soares”), leased the premises to Yoon Young Byung (“Yoon”) for a period of 55 years starting on that date and ending on May 11, 2047 (the “lease”). The lease required Yoon to pay an initial monthly rent of \$500. This amount would increase by \$25 every five years. Yoon was also required to pay thirty-six months rent in advance. Consistent with the terms of the lease, Yoon assigned his interest in the lease to Hua Chong Yan (“Hua”) on September 29, 1992. On October 4, 1996, Teregeyo and Hua reformed the Lease to allow Hua to pay a portion of the monthly rent (up to \$116) to the Small Business Administration (“SBA”) for Teregeyo’s benefit on account of an earlier SBA loan which was secured by the premises.

¶ 3 In 1998, Cho Min Bo (“Cho”), Teregeyo’s alleged business partner, took out three separate loans from Stephanson totaling \$50,000. In an assignment of lease executed on February 27, 1999 (the “assignment”), and subsequently amended on April 17, 1999, Teregeyo stated that

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<sup>1</sup> In her brief, Stephanson argues that instead of making an Article XII argument, Teregeyo should have argued that he was entitled to a leasehold interest in the premises, not because of any real property conveyance, but rather due to the numerous defaults and settlements obtained against the remaining defendants. Stephanson notes that Teregeyo did not make this particular argument. Plaintiff-Appellee’s Opening Br. at 15. Because Teregeyo, the appellant in this case, did not raise this argument, and because Stephanson prevailed on this point before the trial court, we decline to address it.

he wished to retire Cho's debt to Stephanson and assigned all of Teregeyo's rights, title, and interest in the lease, to Stephanson. The assignment, as amended, further provided that Teregeyo would remain legally obligated for the balance plus interest on the SBA loan but current payments would be made by Stephanson. In the event that Teregeyo did not promptly reimburse Stephanson for payments made by Stephanson to SBA, then Teregeyo had the option of either reimbursing Stephanson with interest at 12% per annum or extending Stephanson's right to collect rent beyond the term of the lease.

¶ 4 On July 11, 2001, Yoon, having earlier mutually rescinded his assignment to Hua, assigned his interest in the lease to Jin Zhong Chen ("Jin"). Jin subsequently assigned his interest in the lease to Li Minglong ("Li").

¶ 5 On September 14, 2001, Stephanson filed an action in the trial court against Teregeyo, Yoon, Hua and other unnamed persons, who she believed were occupying the premises, for quiet title, ejectment, mesne profits (loss of rent), an injunction, and rental income due from the property through the year 2047. According to Stephanson's complaint, Hua breached her obligations under the lease by vacating the premises and ceasing to pay rent in September 2000. Stephanson's complaint further alleges that Teregeyo changed the locks affixed to the house on the premises and generally obstructed Stephanson from finding a new tenant.

¶ 6 Teregeyo filed an answer to Stephanson's complaint raising the affirmative defenses that both the assignment and amendment thereto were without consideration and unenforceable, and that Stephanson failed to state a claim upon which relief could be granted. Stephanson moved for summary judgment based on the terms of the assignment and Teregeyo moved to dismiss, asserting that the assignment and its amendment violated Article XII of the Commonwealth Constitution, which prohibits land ownership by individuals who are not of Northern Mariana Islands descent.

¶ 7 The trial court, viewing the evidence in the light most favorable to Teregeyo, found that whether the assignment was supported by sufficient consideration was a genuine issue of material fact which precluded the entry of summary judgment. The trial court also denied Teregeyo's motion to dismiss because it was not clear whether the assignment constituted an assignment of a leasehold interest, or an assignment of only the right to collect rent under the original lease.

¶ 8 Before the scheduled trial, Stephanson and Hua settled and stipulated to dismiss the case against Hua with prejudice. All the other defendants, except for Teregeyo, defaulted. The claims against Teregeyo were tried in November 2003. At trial, Stephanson's former attorney, Pamela Brown, gave testimony regarding the meetings between Teregeyo, Stephanson, and herself that led to her drafting the assignment. Ann Jordan, manager of Title Insurance Office, Pacific

America Title, testified that the original lease was never cancelled or terminated and was still in effect.

¶ 9 In its decision and final order of March 16, 2004, the trial court found that the assignment did not violate the statute of frauds, and was supported by valid consideration because Stephanson's promise to forego pursuing Cho's \$50,000 debt in exchange for Teregeyo's assignment of his interest in the lease was bargained-for consideration made in exchange for another promise. Furthermore, the trial court held that Article XII of the Commonwealth Constitution did not invalidate the entire assignment. Although the trial court found that the assignment's "'extension' language of Section II(A) *does* represent an unconstitutional transfer of a long term interest in real property, . . . the Assignment's 're-let' language is not sufficient to transfer to Stephanson the ability to lease the premises herself" and the unconstitutional provision could be severed. *Stephanson v. Teregeyo*, Civ. No. 01-0497E, NMI Super. Ct. (Mar. 16, 2004) (Decision and Final Order at 7-8). Section I(B) of both the assignment and its amendment gave Stephanson the right to collect rent beyond the period of the lease only to the extent Stephanson made payments to the SBA on Teregeyo's behalf and did not include any other right that Teregeyo had in the lease or the land itself. Accordingly, the trial court found Section I(B) did not violate Article XII of the Commonwealth Constitution.

¶ 10 The trial court also ruled that, in order for Stephanson to acquire the right to re-let the premises, she had to acquire some estate in land under principles of property law. The assignment did not create a valid lease in reversion and could not transfer to Stephanson the ability to create a new lease in the property because the assignment did not state the rent Stephanson would have to pay to Teregeyo. Accordingly, Stephanson had no right to re-let the premises or to possession after the lease ends. The trial court also declined Stephanson's request to reform the assignment to conform to the requirements of a lease, thereby giving Stephanson the right to re-let the premises in the event that Yoon defaulted. The trial court believed that it was reasonable for Stephanson to bear the risk of mistake in drafting the assignment, particularly because of the inequitable nature of the assignment's terms which essentially allowed Stephanson to recoup the value of the \$50,000 loan for Cho's debt more than ten times during the lease term. As such, the trial court held that it would be inconsistent to enlarge its scope through equity.

¶ 11 The trial court therefore refused to grant Stephanson's claim against Teregeyo for delivery of possession of the premises, and also declined to issue (i) an order quieting title to the premises in favor of Stephanson, (ii) an order ejecting the unidentified individuals from the property, or (iii) an order enjoining all defendants or anyone else from re-entering the property. The trial court did not award any monetary damages to Stephanson from Yoon, but instead

divested Yoon of all his interests as the lessee in the lease and vested Stephanson with all of Yoon's rights under the lease. Finally, the trial court found that even though Stephanson did not prevail in all her claims, she was still the prevailing party in the action and was entitled to attorney's fees under the language of the assignment.

¶ 12 On April 29, 2004, the trial court issued a clarification of its final order, which amended the final order to make clear that Stephanson had no right of possession against Teregeyo under the assignment. However, the order stated that based on the default judgments entered against Yoon, Cheng and others, as well as the assignment to Stephanson of Li's interest in the leasehold premises, Stephanson holds all of Yoon's rights under the lease including a right to possess and sublease or assign the premises. At the same time, Stephanson is entitled to all rental income for the remaining term of the Yoon lease based on the assignment.

## II

¶ 13 On appeal, Teregeyo argues that the trial court erred in its holding that the assignment of the lease does not violate Article XII of the Commonwealth Constitution. Teregeyo also alleges that the assignment was a valid and enforceable contract supported by adequate consideration. Both issues are questions of law, which this Court reviews de novo. *Isla Financial Services v. Sablan*, 2001 MP 21 ¶ 2.

### *Article XII Claim*

¶ 14 The Commonwealth Constitution makes clear that only "persons of Northern Marianas Island descent" may obtain "permanent and long-term interests in real property within the Commonwealth." NMI Const. art. XII § 1. Such interests "include[] freehold interests and leasehold interests of more than fifty-five years including renewal rights." NMI Const. art. XII § 3. In addition, this Court has made clear that "[p]ersons who are not of Northern Marianas descent are prohibited from acquiring such interests by 'sale, lease, gift, inheritance, or other means.'" *Aldan-Pierce v. Mafnas*, 2 NMI 122, 143 (1991) (quoting NMI Const. art. XII § 2).

¶ 15 To qualify as being of Northern Marianas descent, a person must be a "citizen or national of the United States and . . . [be] at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof or an adopted child of a person of Northern Marianas descent if adopted while under the age of eighteen years." NMI Const. art. XII § 4. Stephanson is a Chinese national who holds a green card and is married to a citizen of the United States. Defendant-Appellant's Excerpts of Record ("ER") at 12. As such, she does not qualify as a person of Northern Marianas descent.

¶ 16 In the event that a person not of Northern Marianas descent has been given a long-term interest in real property in the lease, the transaction is void ab initio. *Aldan-Pierce v. Mafnas*, 2

NMI 122, 143 (1991) (citing NMI Const. art. XII § 6); *Wabol v. Villacrusis*, 958 F.2d 1450, 1462 (9th Cir. 1990) (as amended 1992). Such circumstances amount to the lease being “without force and effect.” *Wabol* at 1462. There are “no equitable exceptions” to this rule. *Id.*

¶ 17 Section I(B) of the assignment originally provided :

Assignor hereby warrants, covenants and promises that should he become delinquent on the Small Business Administration (SBA) Loan Number 285168-30-01 with a balance of approximately \$18,314.00 owing thereon which Assignor warrants, covenants and promises to keep paid and current, he shall immediately notify Assignee of any default action by SBA in connection with the loan and the Premises. Assignee may then exercise her option to pay any delinquent payments owed SBA by Assignor for which Assignor shall either extend Assignee’s rights to collect rent beyond the term of the Lease or pay to Assignee the amount of the delinquent payments plus penalties and interest made to SBA in total plus 12% per annum until paid in full by either method Assignor may choose.

ER at 61, 65. Following the amendment, Section I(B) reads as follows:

Assignor hereby warrants, covenants and promises that he will remain legally obligated for the balance plus interest on the Small Business Administration (SBA) Loan Number 285168-30-01 with a balance of approximately \$18,314.00 owing thereon but further agrees that Assignee will keep SBA Loan Number 285168-30-01 paid and current with Assignor making prompt payments equal to those paid by Assignee on SBA Loan Number 285168-30-01 until the balance of approximately \$18,314.00 plus any interest thereon is paid in full. Assignor further warrants, covenants and promises that should Assignor fail to make payments to Assignee as provided in this subsection, Assignor shall extend Assignee’s rights to collect rent beyond the term of the Lease or pay to Assignee the amount of the delinquent payments plus penalties and interest made to SBA in total plus 12% per annum until paid in full by either method Assignor may choose.

*Id.* at 61.

¶ 18 The trial court held that the plain terms of Section I(B) of both the original and amended versions of the lease assignment “gave to Stephanson regarding the SBA loan repayment . . . *the right to collect rent*” and did “not include any other right [that] Teregeyo had in the Lease or the land itself.” *Stephanson v. Teregeyo*, Civ. No. 01-0497E (Decision and Final Order at 9). On this issue, the trial court is correct. The trial court further ruled that “an interest in the *rental proceeds* of real property is *not* an interest in real property, but rather, an interest in monetary income derived from the use of real property.” *Id.* We disagree. Under the Restatement, “rents from real estate are deemed to be realty rather than personalty.” RESTATEMENT (THIRD) OF PROP.: MORTGAGES § 4.2 cmt. a (1997). Accordingly, Teregeyo’s transfer of the right to receive rent to Stephanson violates Article XII of the Commonwealth Constitution.

¶ 19           However, this Court has previously determined “that an option to renew or extend [a] lease term may be severed, under appropriate facts, from a lease agreement.” *Diamond Hotel Co., Ltd. v. Matsunaga*, 4 NMI 213, 220 (1995). We have also held that “Article XII, as written, does not preclude severance where the parties have agreed to do so in order to save the underlying lease.” *Id.* In addition, “a provision in a lease agreement may be severed from the lease if such provision is not integral to the lease agreement and the parties have agreed to severance.” *Id.*

¶ 20           As the trial court correctly noted, the assignment contains an explicit severability clause. Section VI(C) of the assignment states that:

If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to the persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each such term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

ER at 66-76. The assignment of rent proceeds was only one of two ways in which Teregeyo could repay Stephanson. Teregeyo was required to assign the right to collect rent or, alternatively, repay the debt directly with interest as Section I(B) makes clear when, as noted above, its amended version states that:

Assignor further warrants, covenants and promises that should Assignor fail to make payments to Assignee as provided in this subsection, Assignor shall extend Assignee’s rights to collect rent beyond the term of the Lease *or* pay to Assignee the amount of the delinquent payments plus penalties and interest made to SBA in total plus 12% per annum until paid in full by either method Assignor may choose.

ER at 61 (emphasis added). Removing the first option, the assignment now reads:

Assignor further warrants, covenants and promises that should Assignor fail to make payments to Assignee as provided in this subsection, Assignor shall . . . pay to Assignee the amount of the delinquent payments plus penalties and interest made to SBA in total plus 12% per annum until paid in full . . . .

Because Teregeyo is left with this means to repay the debt after severance, the assignment of rental proceeds is not an integral part of the agreement and is hereby severed. Accordingly, after the severance of this provision, the assignment no longer violates Article XII.

*Adequacy of Consideration*

¶ 21           Teregeyo also argues that the contract in question is not supported by adequate consideration. Pursuant to the assignment, Stephanson agreed to forgive a debt owed to her by Cho Min Bo in exchange for Teregeyo’s payments. Teregeyo claims that, because he did not

personally benefit from Stephanson’s promise to forbear from pursuing the debt owed by Cho, there was a failure of consideration to support the assignment.

¶ 22 All contracts require an offer, acceptance, and consideration to be legitimate and enforceable. *Isla Financial Services v. Sablan*, 2001 MP 21 ¶ 13. “A contract is not binding and enforceable unless it is predicated upon bargained-for consideration.” *Id.* ¶ 14. Teregeyo argues that *Isla* requires this Court to find Stephanson’s promise to forbear from pursuing Cho was inadequate because Teregeyo did not personally receive a benefit from the bargain and the offer to pay the debt of another can never constitute valid consideration. In *Isla*, this Court held that the unilateral promise to pay “[t]he existing debt of a third person, even a spouse or other close relation, is not regarded as sufficient consideration and does not give rise to a legal duty.” *Isla* ¶ 15. “To constitute consideration, a performance or a return promise must be bargained for.” *Isla* ¶ 14 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 71(1) (1981)). Furthermore, “[a] performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.” *Id.* (quoting RESTATEMENT (SECOND) OF CONTRACTS § 71(2) (1981)). The facts of *Isla* are, however, distinguishable because in *Isla*, the defendant’s promise to pay the debt of her mother was a unilateral promise and “*Isla* gave nothing and did nothing in return for [the promisor’s] promise to pay,” therefore, no consideration existed and the contract was void. *Id.* ¶¶ 15, 17. In the present case, Stephanson’s attorney met multiple times with Teregeyo to negotiate an agreement that would eradicate Cho Min Bo’s debt to Stephanson. The decision to eliminate the debt was bargained for, and it is not relevant that Teregeyo did not personally benefit from his bargain. “If the requirement of consideration is met, there is no additional requirement of . . . a gain, advantage, or benefit to the promisor or a loss, disadvantage, or detriment to the promisee . . . .” RESTATEMENT (SECOND) OF CONTRACTS § 79(a) (1981). As such, there is adequate consideration to support the contract in the present case.

#### *Attorney’s Fees*

¶ 23 Finally, we note that the trial court elected to award attorney’s fees in its decision and final order. A proper award of attorney’s fees in accordance with the assignment requires that all proceedings, including appeals, have been completed. Because the attorney’s fees were granted before this appeal was filed and decided, the fee award is vacated and must be re-evaluated by the trial court on remand, taking these appellate proceedings into account.



As written, the assignment violates Article XII of the Commonwealth Constitution because the right to collect rent is an interest in real property under the Restatement. Furthermore, attorney's fees should not have been awarded in this case until all proceedings, including appeals, are complete. Accordingly, we REVERSE these holdings by the trial court, VACATE the fee award, and REMAND the matter to the trial court for re-determination of appropriate attorney's fees. However, we hold the assignment is supported by adequate consideration and that the clause which violates Article XII of the Commonwealth Constitution is severable under the criteria set forth in *Diamond Hotel*. As such, the trial court's decision that the assignment is supported by adequate consideration and that the clause in question may be severed is AFFIRMED.<sup>2</sup>

Concurring:  
Borja, J.P.T., Torres, J.P.T.

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<sup>2</sup> As noted previously, this Court hereby severs the clause from the assignment. The only issue to be reviewed by the trial court on remand is the re-determination of attorney's fees.