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

SHINJI FUJIE and TOSHIN GROUP INTERNATIONAL, INC.,
Plaintiffs-Appellees,

v.

JOAQUIN Q. ATALIG and RAMON K. QUICHOCHO,
Defendants-Appellants.

SUPREME COURT NO. 2013-SCC-0043-CIV
SUPERIOR COURT NO. 10-0131

OPINION

Cite as: 2014 MP 14

Decided November 17, 2014

Ramon K. Quichocho, Defendant-Appellant, Pro Se
Robert H. Myers, Saipan, MP, for Defendant-Appellant Joaquin Q. Atalig
Stephen J. Nutting, Saipan, MP, for Plaintiffs-Appellees Shinji Fujie and Toshin Group International, Inc.

BEFORE: JOHN A. MANGLONA, Associate Justice; DAVID A. WISEMAN, Justice Pro Tem; JOSEPH N. CAMACHO, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Defendants-Appellants, Joaquin Q. Atalig ("Atalig") and Ramon K. Quichocho ("Quichocho") appeal the trial court's order granting partial summary judgment quieting title in a leasehold to Shinji Fujie and Toshin Group International, Inc. (collectively, "Toshin Group"). The court granted partial summary judgment after concluding there was no genuine issue of material fact on abandonment and the Toshin Group established it had not abandoned the property. For the reasons discussed below, we AFFIRM the order granting partial summary judgment.

I. Facts and Procedural History

¶2 In June 2006, the Toshin Group leased two parcels of undeveloped property from Joaquin Atalig.[1] The lease provided: (1) the Toshin Group would prepay the full amount of the rent by July 7, 2006; and (2) the Toshin Group defaults on the lease if it "abandon[s] the leased property."[2] *Shinji Fujie v. Atalig*, No. 10-0131 (NMI Super. Ct. Jan. 5, 2012) (Decl. of Shinji Fujie Ex. 1 at 2, 5) [hereinafter Lease]. Soon after signing the lease, the Toshin Group paid the rent in full.[3]

---

[1] At this point, Ramon K. Quichocho was not involved. He only became involved when Joaquin Q. Atalig began the process to terminate the Toshin Group's lease.

[2] The parties agree "abandon" was not defined in the lease. *Shinji Fujie v. Atalig*, No. 10-0131 (NMI Super. Ct. Feb 6. 2012) (Defendants' Responses to Plaintiffs' Statements of Undisputed Facts at 6) (agreeing with the Toshin Group's statement).

[3] Atalig and Quichocho nominally contested this fact before the trial court; however, there are two reasons why their nominal dispute at the trial court does not create a genuine issue of fact on whether the Toshin Group paid the lease.

First, Atalig and Quichocho's answer to the Toshin Group's Statement of Uncontested Facts was non-responsive. The Toshin Group asserted there was no dispute that "[t]he lease was prepaid for the entire term of fifty-five (55) years with the payment of three hundred sixty three thousand and three hundred dollars . . . ." *Shinji Fujie*, No. 10-0131 (NMI Super. Ct. Jan. 5, 2012) (Statement of Undisputed Facts at 2) (emphasis omitted). Atalig and Quichocho disagreed; they contended the Toshin Group's statement was a misstatement of fact because "[t]he term of the Lease was for 55 years, *unless sooner* terminated. Fifty Thousand Dollars was an *unrefundable assurance payment*. The Lease expressly states: 'FOR AND IN CONSIDERATION of the rent hereinafter reserved *and of the covenants contained herein, to be observed and performed . . .*'" *Shinji Fujie*, No. 10-0131 (NMI Super. Ct. Feb. 7, 2012) (Defendants' Responses to Plaintiffs' Statements of Undisputed Facts at 2) (emphasis in original) (quoting Lease at 1-2). Atalig and Quichocho's response never addressed the assertion that the lease was paid in full—and, as is indicated by the excerpt below, they selectively quoted from the contract while disregarding unsupportive terms. This is enough to treat the assertion that the rent was paid in full as a fact not in genuine dispute.

Second, the terms of the lease in conjunction with the parties' actions before litigation support recognizing the lease as paid in full. The pertinent part of the lease states:

> 4. Lease Payments. Lessee shall pay to Lessor, as rent for the Premises for the full term hereof, the total amount of Three-Hundred Sixty-Three Thousand and Three-Hundred Dollars and No Cents ($363,000.00), in installments as follows:
> (a) Initial Payment. Fifty Thousand Dollars ($50,000.00) shall be paid to Lessor, as [an] unrefundable assurance payment, prior to or upon the execution of this Lease.

¶ 3 In 2009, Atalig inspected the leased property and determined it was undeveloped, overgrown with grass and brush, and littered with trash and wire insulation stripped from copper wires. Atalig mailed notice to the Toshin Group informing them that they had defaulted on the lease by abandoning the property. After not receiving a response, Atalig attempted to terminate the lease by filing a "Termination of Ground Lease" document with the Recorder's Office.

¶ 4 On August 17, 2010, the Toshin Group filed a complaint against Atalig and Quichocho seeking quiet title to the leasehold and asserting: slander of title, breach of lease, breach of the implied covenant of good faith, and interference with contract. Subsequently, the Toshin Group filed a motion for partial summary judgment. After reviewing the motion, the court: (1) granted the motion as it pertained to the slander-of-title claim, breach-of-lease claim, and declaration of quiet title; (2) deferred the motion as it pertained to the breach-of-the-covenant-of-good-faith claim; and (3) denied the motion as it pertained to the interference-with-contract claim.

¶ 5 After the trial court's summary judgment decision, Atalig and Quichocho asked the court to certify an interlocutory appeal pursuant to NMI Rule of Civil Procedure 54(b). The court granted the motion as it pertained to the declaration-of-quiet-title claim but denied the motion for the rest of the claims.

¶ 6 Atalig and Quichocho timely appealed.

II. Jurisdiction

¶ 7 We have jurisdiction over trial court final judgments and orders. 1 CMC § 3102(a). Here, the court entered a final judgment by certifying a portion of its decision under NMI Rule of Civil Procedure 54(b) motion.

III. Standard of Review

¶ 8 Atalig and Quichocho contend the court erroneously granted partial summary judgment quieting title in the Toshin Group. We review de novo appeals of summary-judgment decisions. *Villagomez v. Manibusan*, 2013 MP 6 ¶ 12. On summary judgment, we construe the evidence in the light most favorable

---

> (b) Remaining Payment. Three-Hundred Thirteen Thousand Three-Hundred Dollars and No Cents ($313,000.00) shall be paid to Lessor by Lessee, as advance rent in full, on or before July 7, 2006.

Lease at 2. The contract is clear that the total amount of rent for the full term of the lease is $363,000 and the amount was due by July 7, 2006. If we were to accept Atalig and Quichocho's contention that the full payment of the lease is in dispute, the Court would have to assume: (1) the Toshin Group breached the contract by failing to pay by July 7, 2006; and (2) Atalig and Quichocho failed to act on that breach for over three years (and in fact continues to not act on that breach because they did not raise the claim at the trial court or on appeal) despite the contract stating a default occurred if the lessee fails to pay for fifteen days. Such assumptions are unreasonable in light of Atalig and Quichocho's otherwise active approach to holding the Toshin Group accountable for any purported breaches of the contract (e.g. attempting to terminate the lease over alleged abandonment).

Based on the foregoing reasons, we treat the assertion that the lease was paid in full as a fact that is beyond genuine dispute.

to the non-moving party. *Id.* Summary judgment is proper if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." NMI R. CIV. P. 56(c).

IV. Discussion

¶ 9 Atalig and Quichocho argue that the partial summary judgment quieting title was improperly granted. Because the decision turns on whether the property was abandoned,[4] we begin (and end) our analysis there.

¶ 10 To answer that question, we must first determine the standard for abandonment. In their briefing, the parties agree on the common-law standard for abandonment: non-use and affirmative intent to abandon. But this is the wrong standard. Unless Commonwealth law provides otherwise, we interpret contracts according to the principles set forth in the Restatements. *See* 7 CMC § 3401 (explaining that we turn to the Restatements if our laws are silent); *Cabrera v. Young Sun Rae*, 2001 MP 19 ¶ 22 (applying Restatement to interpret contract).

¶ 11 The Commonwealth Code is silent on how to interpret the parties' contract; thus, we turn to the Restatements. 7 CMC § 3401. Under the Restatements, "[u]nless a different intention is manifested, . . . technical terms and words of art are given their technical meaning when used in a transaction within their technical field." RESTATEMENT (SECOND) OF CONTRACTS § 202(3); *accord Valley Forge Ins. Co. v. Field*, 670 F.3d 93, 102 (1st Cir. 2012); *Fox v. United States Dep't of Housing & Urban Dev.*, 680 F.2d 315 (3d Cir. 1982). "Abandonment" is a technical term in property law, *McEwen v. Big Sky*, 545 P.2d 665, 668 (Mont. 1976), and there is no indication in the contract that the parties intended to use a different meaning,[5] *see generally* Lease, thus we apply the term's technical meaning. Under the technical definition, abandonment requires the tenant: (1) "vacate[] the leased property without justification;" (2) "[vacate] without any present intention of returning;" *and*[6] (3) "default[] in the payment of rent." RESTATEMENT (SECOND) OF PROPERTY: LANDLORD AND TENANT § 12.1 cmt. i.

---

[4] If the property was not abandoned, summary judgment quieting title in the Toshin Group was proper because Atalig and Quichocho do not assert they had another basis for terminating the lease. However, if the property was abandoned—or if there is a genuine issue of fact affecting whether the property was abandoned—then the motion was improperly granted because there may have been a legal basis to terminate the lease.

[5] The contract used the term "abandon," which Atalig and Quichocho argued to the trial court means something different than "abandonment." But they waived this argument when they did not brief the assertion on appeal. *See Lucky Dev. Co. v. Tokai*, 3 NMI 79, 92 (1992) (explaining arguments not raised in a brief are generally considered waived); *Matsunaga v. Cushnie*, 2012 MP 18 ¶ 13 (explaining waiver applies when a party fails to make a cognizable argument). But even if we considered the argument, there is no reasonable basis to recognize the distinction Atalig and Quichocho ask us to draw because the terms are interchangeable. *See generally Estate of Ogumoro v. Han Yoon Ko*, 2011 MP 11 (using "abandon" and "abandonment" interchangeably); RESTATEMENT (SECOND) OF PROPERTY: LANDLORD AND TENANT § 12.1(3) & cmt. i (same).

[6] Atalig and Quichocho's argument that we have to consider each element is incorrect. As the Toshin Group correctly highlights, abandonment requires proof of all the elements. *See* RESTATEMENT (SECOND) OF PROPERTY: LANDLORD AND TENANT § 12.1 cmt. i (using "and" to separate the elements). If one of the elements is not present, then the Court properly concludes that there is no abandonment as a matter of law.

¶ 12 Moving to the facts at hand, we must apply the definition of abandonment to determine whether summary judgment quieting title was proper. The motion was properly granted if the Court concludes the evidence, viewed in a light most favorable to Atalig and Quichocho, establishes, as a matter of law, the property was not abandoned. *Villagomez*, 2013 MP 6 ¶ 12 (explaining the standard for summary judgment); *supra* note 4 (explaining why summary judgment on the quiet-title claim turns on abandonment). The Toshin Group could establish the property was not abandoned by presenting facts beyond genuine dispute that they did not: (1) vacate the property without justification; *or* (2) vacate without any present intention to return; *or* (3) default on rent payments. *See* RESTATEMENT (SECOND) OF PROPERTY: LANDLORD AND TENANT § 12.1 cmt. i (requiring the presence of each condition for abandonment).

¶ 13 This third element is decisive in this case. The Toshin Group did not default because they pre-paid the rent for the entire term of the lease. *Shinji Fujie*, No. 10-0131 (NMI Super. Ct. Jan. 5, 2011) (Statement of Undisputed Facts at 2); *supra* note 3. Because the Toshin Group was not in default on the lease and abandonment requires the lessee defaults, the Toshin Group has established as a matter of law that the property was not abandoned. *See* RESTATEMENT (SECOND) OF PROPERTY: LANDLORD AND TENANT § 12.1 cmt. i (defaulting is a necessary element of abandonment). Therefore, summary judgment quieting title is proper.[7]

¶ 14 Having concluded summary judgment is proper, we find the need to address the parties' troubling contention that the common-law standard for abandonment controls this case. To put it bluntly, they should *and* did know better. The trial court applied the Restatement standard that we follow. *Shinji Fujie v. Atalig*, No. 10-0131 (NMI Super. Ct. May 10, 2013) (Memorandum Opinion and Order Regarding Plaintiffs' Motion for Partial Summary Judgment at 5). Despite that, neither party cited the standard in their brief or asserted why it does not apply. Instead they relied on the common-law standard. By overlooking the Restatement in favor of the common law, the parties ignored § 3401's command to look at the common law *only if* both the Commonwealth Code and the Restatements are silent. 7 CMC § 3401. When submitting briefs to this Court, the failure to heed the commands of our statutes is highly disfavored, undermines effective advocacy, and is sometimes sanctionable conduct. *See* ABA MODEL RULES OF PROFESSIONAL CONDUCT 3.3(a)(1)-(2) (1983) (explaining that a lawyer shall not knowingly make false statements of law or fail to disclose adverse authority).

---

[7] Because this case can be resolved by looking to facts that are not in genuine dispute, we do not need to address Atalig and Quichocho's arguments that (1) the maintenance evidence was improperly weighed or (2) there was insufficient evidence of non-use or intent to abandon. Even if Atalig and Quichocho's contentions are correct, summary judgment is still proper because the undisputed fact that the Toshin Group did not default precludes the Court from concluding the property was abandoned. *See supra* note 4 (explaining summary judgment is proper if the property was not abandoned).

¶ 15 Quichoco's actions are especially troubling in this case. Not only did he ignore the trial court's proper recitation of the abandonment standard in this case, he also ignored the Federal District Court for the Northern Mariana Islands' holding that the Commonwealth's standard for abandonment comes from the Restatements. *Sin Ho Nam v. Quichocho*, 841 F. Supp. 2d 1152, 1171 & n.9 (D. N. Mar. I. 2011). This is even more egregious because Quichocho was a party in that federal case. In *Sin Ho Nam*—which involved facts eerily similar to the appeal presently before us—Atalig and Quichocho were in a legal dispute involving a lease they had terminated two years into the agreement because the lessee had allegedly abandoned the property. *Id.* at 1154. The federal court held: (1) abandonment in the Commonwealth requires the lessee fails to pay rent and (2) there is no abandonment if the lease is prepaid. *Id.* at 1171; *see also id.* at 1171 n.9 (explaining the Restatement standard for abandonment applies because of 7 CMC § 3401). After rejecting Atalig and Quichocho's abandonment claim, the federal court stressed their argument was indefensible and meritless: "[T]he defendants' utter lack of support for their 'abandonment' claim suggests (for now, I stop just short of saying 'proves') that this . . . [basis for terminating the lease] was in bad faith." *Sin Ho Nam*, 841 F. Supp. 2d at 1171.

¶ 16 Taken together, the trial court and federal court's holdings mean Quichocho cannot plead ignorance of the Commonwealth's standard for abandonment. His actions can only be deemed a deliberate attempt to misdirect the Court.

¶ 17 We find the foregoing facts extremely disconcerting. The actions of Quichocho and his co-counsel, Robert H. Myers, appear to the Court to be intentional malfeasance. It seems they willfully ignored the proper standard because, as is discussed earlier in this opinion, the correct standard clearly prevents Atalig and Quichocho from prevailing on their abandonment argument and likely makes the appeal frivolous.[8] Accordingly, the Court will be issuing a show-cause order directing Quichocho and Myers to explain why we should not order the imposition of costs under Supreme Court Rule 38.

/
/
/
/
/
/
/
/
/
/
/
/
/

[8] We likewise cannot fathom why the Toshin Group did not highlight the correct standard. But they did not bring this appeal; thus, they are spared further rebuke.

V. Conclusion

¶ 18 For the reasons discussed above, we AFFIRM the trial court's decision granting partial summary judgment quieting title in the Toshin Group.

SO ORDERED this 17th day of November, 2014.

/s/
JOHN A. MANGLONA
Associate Justice

/s/
DAVID A. WISEMAN
Justice Pro Tem

/s/
JOSEPH N. CAMACHO
Justice Pro Tem