IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

ESTATE OF SOLEDAD T. OGUMORO,
Plaintiff-Appellee,
v.

KO HAN YOON,
Defendant-Third-Party Plaintiff-Appellant,
v.

JUNG YOUNG BOO AND D.Y. CORPORATION,
Third-Party Defendants-Appellees.

Supreme Court No. 2016-SCC-0022-CIV

ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR REHEARING

Cite as: 2020 MP 4

Decided April 8, 2020

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE JOHN A. MANGLOÑA
JUSTICE PRO TEMPORE WESLEY M. BOGDAN

Superior Court Civil Case Nos. 99-0655; 05-0065
Associate Judge Kenneth L. Govendo, Presiding

MANGLOÑA, J.:

¶ 1 Appellant Ko Han Yoon ("Ko") petitions for rehearing in *Estate of Ogumoro v. Ko Han Yoon*, 2019 MP 4. He first alleges the opinion is in error because it misidentified the First Amended Complaint as the Second Amended Complaint. As we submit below, this is a clerical error and our opinion is based on the First Amended Complaint. Ko also alleges several factual errors: (1) the trial court never found the rent at issue had remained unpaid; (2) the trial court never found Soledad Ogumoro ("Ogumoro") had no knowledge Ko had taken over the leasehold interest of the former tenants; (3) the trial court never found the exhibits to the First Amended Complaint were posted; (4) the trial court never found the complaint remained posted; and (5) this Court erred in finding its own facts. Ko also asserts three legal errors: (1) this Court incorrectly applied the Restatement standard; (2) the First Amended Complaint gave him no ability to avoid forfeiture; and (3) posting the First Amended Complaint without mailing it was not a reasonable attempt to give notice. For the following reasons, we GRANT in part and DENY in part Ko's petition.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 This matter is reviewed for the third time. In our first decision, *Estate of Ogumoro v. Ko Han Yoon*, 2011 MP 11 ("*Ogumoro I*"), we reviewed whether Ko breached a ground lease of Ogumoro, the lessor. We held he could not be liable under the lease and vacated the court's determination that his interest was terminated and the award of damages for lost rent to Ogumoro. *Ogumoro I*, 2011 MP 11 ¶¶ 42, 72. We remanded the case, instructing the court to decide the applicability of reporter's note 13 to the Restatement (Second) of Property: Landlord & Tenant § 12.1(2)(b), and the issues of abandonment and the bona-fide purchaser rule. *Id*. ¶¶ 53, 64.

¶ 3 On remand, the trial court considered these issues, finding Section 12.1(2)(b) allows for lease termination after a prompt demand for rent. It also found reporter note 13's requirement that a demand for payment of the exact sum due on the day the rent is due could be dispensed by lease or statute. The same is true for a notice of termination for nonpayment of rent. The trial court found that a section of the Holdover Tenant Act ("HTA") applied to the dispute and found the First Amended Complaint satisfied the notice of default requirement in that HTA section.

¶ 4 After the trial court issued its decision, the Estate moved for judgment for unpaid rent, pre- and post-judgment interest, and costs, to which Ko responded by filing a Cross-Motion for Judgment on All Issues and Claims. In his Cross-Motion, Ko argued the trial court should have ruled on the issues of abandonment and the bona-fide purchaser rule on remand. The trial court denied Ko's Cross-Motion, holding this Court's mandate required it to consider the termination of Ko's lease under the Restatement, and then analyze the issues of abandonment and the bona-fide purchaser rule if necessary. In response to the Estate's motion, the court held it could enter judgment for damages for unpaid rent because Ko impliedly consented to litigate the Restatement and HTA by comprehensively

discussing his liability on remand. The court ordered Ko to pay unpaid rent of $48,000 with pre- and post-judgment interest.

¶ 5 Ko appealed the trial court's determinations in *Estate of Ogumoro v. Ko Han Yoon*, 2019 MP 4 ("*Ogumoro II*"). On review, we found our mandate in *Ogumoro I* required the court to rely on reporter's note 13 only to the extent it conflicted with Section 12.1(2)(b). 2019 MP 4 ¶ 16. We held the court exceeded our mandate by erroneously applying the HTA when our mandate found no Commonwealth law applicable. *Id.* ¶ 17. However, we affirmed the trial court's other holdings that the lease was properly terminated and that Ko was liable for unpaid rent. *Id.* ¶ 33.

¶ 6 Ko now petitions for rehearing of our decision.

II. STANDARD OF REVIEW

¶ 7 Ko raises several factual and legal issues in his petition. A petition for rehearing "must state with particularity each point of law or fact that the petitioner believes the Court has overlooked or misapprehended and must argue in support of the petition." NMI SUP. CT. R. 40(a)(2). A successful petition requires a showing of "how 'the Court ignored or incorrectly construed legal issues or factual matters' in resolving the case." *Commonwealth v. Bashar*, 2016 MP 2 ¶ 3 (citing *Commonwealth Ports Auth. v. Tinian Shipping Co.*, 2008 MP 2 ¶ 3). A petitioner cannot "raise new issues for the first time on rehearing, absent extraordinary circumstances." *Caiyun Mu v. Hyoun Min Oh*, 2017 MP 4 ¶ 5 (citing *N. Marianas Coll. v. Civil Serv. Comm'n*, 2007 MP 30 ¶ 2). We also decline to "rehash [] an issue and argument already raised and decided." *In Re Estate of Deleon Guerrero*, 1 NMI 324, 327 (1990). Other courts have similarly ruled on this standard, reiterating that a petition for rehearing serves a limited purpose of allowing the court to correct an error, and does not provide a party an opportunity to reargue its case. *See, e.g.*, *United States v. Mageno*, 786 F.3d 768, 774 (9th Cir. 2015); *In re Gray*, 525 B.R. 441, 442 (B.A.P. 8th Cir. 2014); *United States v. Dharni*, 757 F.3d 1002, 1003 (9th Cir. 2014). Parties should take care to limit their arguments on rehearing to those that allege the Court missed or misinterpreted points of law or fact.

III. DISCUSSION

A. Factual Oversights and Misconstructions

¶ 8 Ko argues several factual issues, including that this Court misidentified the complaint at issue and erred by relying on facts outside the record concerning unpaid rent. He also argues we state Ogumoro was never put on notice about Ko without a corresponding trial court finding below. Ko makes the same arguments again regarding whether the exhibits were attached to the First Amended Complaint, and whether the First Amended Complaint and exhibits remained posted. We consider each of these arguments in turn, reviewing whether Ko

sufficiently demonstrates that the Court overlooked or incorrectly construed these facts. *See Bashar*, 2016 MP 2 ¶ 3.

¶ 9 In *Ogumoro II*, we referred to the complaint that was posted in the newspaper, at the courthouse, and around the property in or around November of 2000, as the Second Amended Complaint. *Ogumoro II*, 2019 MP 4 ¶¶ 4, 25, 26. Ko points out the only complaint that could have been posted at that time was the First Amended Complaint filed in August of 2000. App. 586–87. We agree and submit this was a clerical error. The complaint at issue, and the one analyzed throughout the opinion, is the First Amended Complaint, which should replace each occurrence of "Second Amended Complaint" in *Ogumoro II*.

¶ 10 Ko next asserts this Court incorrectly advanced the argument that the rent remained unpaid at the time material to the underlying case. In his petition, however, he defeats this argument by conceding it was disputed whether the check sent to the Estate constituted rent or partial satisfaction of the judgment below. Regardless, this Court reiterated the status of Ko's rental payments as last found by the trial court, which was the rental payment in February of 1999. This Court did not make that factual finding; it merely restated the trial court's factual finding. We therefore did not misconstrue or overlook this factual point.

¶ 11 Ko also contends the trial court did not make a finding that Ogumoro, as the lessor, was informed of Ko's interest in the lease at issue and that we therefore improperly made this finding in *Ogumoro II*. Whether Ogumoro knew or was put on notice of Ko's ownership of the interest, however, is misdirection. At issue in *Ogumoro II* was whether Ogumoro's posting of the First Amended Complaint satisfied the requirements outlined in the Restatement standard.[1] The standard requires a demand for rent to be made on the tenant before the lessor may terminate the lease. RESTATEMENT (SECOND) OF PROP.: LANDLORD & TENANT § 12.1(2)(b) (1976). It does not require the lessor's knowledge or notice of the tenant's identity. As we discussed in *Ogumoro II*, the emphasis of the standard and its purpose is to put the *tenant* on notice of his or her opportunity to pay rent.

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[1] The standard is the following:

> Except to the extent the parties to a lease validly agree otherwise, if there is a breach of the tenant's obligation to pay the rent reserved in the lease, the landlord may:
>
> (a) recover from the tenant the amount of the rent that is due; and
>
> (b) terminate the lease if the rent that is due is not paid promptly after a demand on the tenant for the rent, unless equitable considerations justify extending the time for payment.

RESTATEMENT (SECOND) OF PROP.: LANDLORD & TENANT § 12.1(2) (1976).

See Ogumoro II, 2019 MP 4 ¶ 23. We find the statements in our opinion regarding Ogumoro's knowledge of Ko were not factual oversights.

¶ 12 Next, Ko contends the trial court did not make a factual finding that certain exhibits were attached to the First Amended Complaint, although we stated so in *Ogumoro II*. The Estate of Ogumoro ("Estate") argues that because the First Amended Complaint refers to and includes them as attachments, it is reasonable to conclude they were attached to the copy posted on the leased premises. It further asserts the First Amended Complaint mentions all relevant information from the exhibits, so whether the exhibits were attached is immaterial.

¶ 13 The First Amended Complaint does list each exhibit, the information relevant to the case, and the rent that remained unpaid. App. 4–6. In addition, our analysis referenced facts, all of which can be found in the First Amended Complaint itself, rather than the exhibits. *See Ogumoro II*, 2019 MP 4 ¶¶ 4, 25. Thus, whether the exhibits were attached has no bearing on our holding as to whether the First Amended Complaint constituted sufficient demand under the Restatement. Notwithstanding Ko's petition for rehearing, we confirm our finding in *Ogumoro II* that the facts set out in the First Amended Complaint suffice to satisfy the Restatement's demand standard. *Id*. ¶¶ 25–26.

¶ 14 Finally, Ko argues we state the complaint remained posted when the trial court never made such a finding. We agree the trial court never made this finding. *See* App. 583–89. But the Restatement and its comments do not require that a demand remain posted for a specific period. *See* RESTATEMENT (SECOND) OF PROP.: LANDLORD & TENANT § 12.1(2). Whether the First Amended Complaint remained posted on the property is therefore immaterial to our previous holding.

¶ 15 We find our use of "Second Amended Complaint" to be a clerical mistake and grant the petition to replace our use of that phrase with "First Amended Complaint." We do not find the remaining allegations to be factual oversights.[2]

B. Legal Oversights and Misconstructions

¶ 16 Ko argues Ogumoro was required to give him a notice of termination in addition to a demand for rent to terminate the lease. He asserts the analysis in *Ogumoro II* ignored comment (n) to Restatement Section 12.1, which he interprets to mean that common law and statutory law, on which the Restatement standard is based, require a notice of termination. Ko also claims the First Amended Complaint fails to meet our demand standard because it did not

[2] We reiterate the purview of this Court is one of review rather than fact-finding. *See* 1 CMC § 3103. All facts of this case were found by the trial court and relied upon here on appeal. To review the legal questions, we relied on factual findings made below and made statements regarding those facts accordingly. Ko seeks to prove we misconstrued facts or found our own facts by bringing forth instances of the parties' competing evidence that were resolved below. We cannot reweigh evidence and decline do so here. *Id*. We also remind the parties a petition for rehearing provides an opportunity for parties to shine a light on legal or factual errors in the previous decision, not to reargue issues or force this Court to reweigh evidence.

demand rent or provide an opportunity to cure the default. We decline to address Ko's last argument, whether he was entitled to notice by mail, because he raises this argument for the first time on petition and presents no extraordinary circumstances. *See N. Marianas College v. Civil Serv. Comm'n*, 2007 MP 30 ¶ 2 (holding that the raising of new issues or contentions on appeal should only be permitted under extraordinary circumstances). We review whether Ko sufficiently demonstrates the Court overlooked or incorrectly construed the alleged legal issues. *Bashar*, 2016 MP 2 ¶ 3.

¶ 17 As to Ko's first argument that a notice of termination was required because statutory regimes have been incorporated into the current Restatement standard—we have already addressed this issue. Our previous opinion clarified the applicable standard was that stated in the Restatement's black letter law. *See Ogumoro II*, 2019 MP 4 ¶ 22. We applied reporter's note 13 only to the extent it did not conflict with the rule stated in Section 12.1(b), and we limited the application to expounding upon Section 12.1(b)'s standard. *Id*. Then, footnote seven explains why the notice of termination was not required by the Restatement standard. *Id*. ¶ 22 n.7. The Restatement's black letter standard does not require a notice of termination. *Id*.; RESTATEMENT (SECOND) OF PROP.: LANDLORD & TENANT § 12.1(2). It requires only a demand for rent. *Id.* § 12.1(2)(b). Comment (n) was referenced as an acknowledgment and in support of the Restatement standard, which we later applied. *Ogumoro II*, 2019 MP 4 ¶¶ 21–28. Moreover, comment (n) refers to state statutes providing summary proceedings that allow the lessor to recover leased property after a tenant defaults on rent. The Commonwealth has no such statute, and so comment (n)'s discussion is irrelevant. Thus, in addition to the reasons outlined in footnote seven and to the extent reporter's note 13 mentions or requires a notice of termination, we find that part conflicts with the black letter Restatement standard and therefore does not apply. We do not find this was a legal oversight.

¶ 18 In *Ogumoro II*, we set forth the standard for a demand for rent. 2019 MP 4 ¶¶ 21, 23. Requirements of a demand for rent include that it should be posted on the premises in a notorious place during daylight hours on the day rent is due, identify the precise sum due, and satisfy the purpose of affording a tenant a reasonable opportunity to make payment. *Id*. ¶ 23. We then applied these requirements to the First Amended Complaint and found them satisfied. *Id*. ¶ 26. We also found equitable considerations did not allow forgiveness of forfeiture because Ko continually failed to pay rent even though he was aware of the obligation and had the ability to do so. *Id*. ¶¶ 27–28. While prior notices sent to previous tenants may satisfy the Restatement standard and represent a more traditional form of a demand, those do not preclude a later document or an amended complaint from also satisfying the Restatement standard. In *Ogumoro II*, we analyzed which parts of the First Amended Complaint satisfied which demand requirement and found it satisfied those legal requirements. *Id*. ¶¶ 24–26. The First Amended Complaint may not have explicitly demanded rent or provided an opportunity to cure Ko's default, but it did state the amount of rent due and we were persuaded that payment of that amount would cure the default.

Id. ¶ 26. Analysis of the equitable considerations provides further support for our holding that the First Amended Complaint satisfied the demand requirement. We explained Ko had experience with leases and the accompanying obligations, he purchased the lease with the help of an attorney, and he paid the first three months of rent. All of these circumstances indicated Ko was aware of his obligation to pay rent and failed to do so. *Id.* ¶ 28. These circumstances, along with the information provided in the First Amended Complaint, provided Ko with a sufficient demand and an opportunity to pay the rent due to cure his default.

¶ 19 A review of our previous analysis yields no evidence of oversight or misconstruction of law. We thus deny the petition as to Ko's allegations of legal oversight or misconstruction.

IV. CONCLUSION

¶ 20 For the foregoing reasons, we GRANT the petition as to the use of "Second Amended Complaint" as a clerical error. We DENY the petition as to all remaining claims.

SO ORDERED this 8th day of April, 2020.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLOÑA
Associate Justice

/s/

WESLEY M. BOGDAN
Justice Pro Tempore

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