LORENZA MAX representing the ESTATE OF LEBAL RENGUUL, Plaintiff,

v.

AIRAI STATE PUBLIC LANDS AUTHORITY, AKEMI ANDERSON AND JOHN DOES 1-10, Defendants.

CIVIL ACTION NO. 10-197

Supreme Court, Trial Division
Republic of Palau

Decided: April 25, 2011

[1] **Property:** Lease

Essential elements of a valid lease include the parties names, description of land, a statement of the term of the lease, and the consideration.

[2] **Contracts:** Parol Evidence/Oral Agreements

Parol evidence is admissible to resolve ambiguity and uncertainty in a lease document, or identify the property. A plaintiff may try to remedy the lack of a description through parol evidence.

[3] **Civil Procedure:** Injunctions

Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted, the applicant is likely to suffer irreparable harm. Injury to real property may be irreparable harm.

ALEXANDRA F. FOSTER, Associate Justice:

I. Procedural History

On November 19, 2010, Plaintiff Lorenza Max, as the Administratrix for the Estate of Lebal Renguul, filed a complaint for declaratory judgment, asking the Court to: (1) declare a 1993 lease contract enforceable, (2) order Defendant Airai State Public Lands Authority ("ASPLA") to issue a new lease in Plaintiff's name, and Defendant Akemi Anderson to resume sublease payments to Plaintiff as the Administratrix of Renguul's estate, and (3) award compensatory and punitive damages.

ASPLA answered on December 7, 2010, that the lease agreement was voidable for a host of reasons, and counterclaiming that in fact Plaintiff, as the Administratrix for Renguul's estate, owed ASPLA back-rent for trespassing and squatting on public lands for twenty years before signing the lease agreement in 1993. ASPLA further sought punitive and compensatory damages.

Anderson also answered on December 7, 2011. She was proceeding pro se at the time. She subsequently hired counsel, and he formally filed an answer on February 16, 2011. In the February 16 answer, Defendant Anderson admitted to entering into a sublease agreement with Renguul's daughter, Lovelyn Renguul, but otherwise testified to a lack of information and argued that Plaintiff's complaint failed to state a claim upon which relief could be granted, and was "barred or limited by the principles of estoppel, impossibility, impracticability, failure of consideration and illegality."

On December 27, 2010, Plaintiff opposed the counterclaims, listing a litany of affirmative defenses.

On April 4, 2011, Plaintiff filed a motion for a preliminary injunction. Defendants filed oppositions on April 15 and 18, and Plaintiff replied on April 22, 2011. Finally, the Court held a hearing on April 25, 2011, and the parties filed additional materials on April 26 and April 28 at the Court's request. The Court will now address this motion.

II. Facts

On July 16, 1993, Lebal Renguul entered into a lease agreement with ASPLA for public land known as Mizuho. At that time ASPLA was chaired by Charles Obichang, Governor of Airai and Renguul's nephew. *See* Claim and Objection, filed on October 29, 2009 in Civil Action No. 09-155. The lease was to last 50 years starting in 1993, along with a 40-year renewal option. Although by all accounts Mizuho is a large piece of property, its boundaries are unclear. In the lease itself, the property is described solely as "Mizuho," with the promise of a map attached as Exhibit A. No map was attached by the time this case was filed. It is unclear whether a map was ever attached. In the only evidence adduced thus far on the issue, Geggie Anson, a signatory to the lease agreement, stated that no map was attached at the time she signed the agreement.

Renguul owed $60/year for the leased property with no escalation clause. Mizuho could be used "for any lawful purposes," and could be subleased with no notice to ASPLA, although Renguul was to submit notice of sublease within 30 days after the assignment was made.

The lease was signed not only by Renguul, Obichang and Anson, but also by Rechirei Bausoch,[1] Ngirangeang Ngiralmau, Gabriel Renguul and Melwat Telai who were all presumably ASPLA board members at the time. The lease was neither notarized nor registered with the Clerk of Courts.

Renguul died on September 5, 2008. This Court appointed Max to administer Renguul's estate on January 20, 2010.

III. Standard for a Preliminary Injunction

A preliminary injunction "is issued to protect plaintiff from irreparable injury and to preserve the court's power to render a meaningful decision after a trial on the merits." Wright, Miller & Kane, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2947 (1995)(hereinafter "WRIGHT § __"). For the Court to grant a preliminary injunction, the movant must show that:

> (1) she has a substantial likelihood of success on the merits;
> (2) a substantial threat exists that she will suffer irreparable injury if the injunction is not granted;
> (3) the threatened injury to the movant outweighs the threatened harm the injunction will cause the non-moving parties; and

[1] ASPLA alleges that Bausoch's signature was forged.

(4) the public interest lies in granting the injunction.

See Shell Co. v. Palau Pub. Utils. Corp., 15 ROP 158, 159–60 (Tr. Div. 2008). *See also* WRIGHT § 2948. "[A]n injunction is an extraordinary and drastic remedy which should not be granted unless the movant carries the burden of persuasion." *Koshiba et al. v. Remeliik et al.*, 1 ROP Intrm. 65, 71 (Tr. Ct. 1983). Injunctive relief "should be awarded only in clear cases that are reasonably free from doubt and when necessary to prevent irreparable injury." 42 Am. Jur. 2d Injunctions § 17 (2010). "[A]n injunction is available as a remedy only if the injury is substantial, irreparable and not adequately remediable at law." *Id*. at § 33.

IV. Legal Conclusions

A. Likelihood of Success on the Merits

"Probable success on the merits has been called the most important matter to be considered by a court in deciding whether to issue a preliminary injunction." 42 Am. Jur. 2d Injunctions § 18. Plaintiff is not required to show certain victory, but she must make out a prima facie case that the 1993 contract is enforceable and that Defendants violated that contract. *See* WRIGHT § 2948.3 at 188. *See also* 42 Am. Jur. 2d Injunctions § 18. "The stronger the likelihood that the plaintiff will win, the less important is the need for the plaintiff to show that the denial of a preliminary injunction would hurt him or her more than granting it would hurt the defendant." 42 Am. Jur. 2d Injunctions § 18. There are several problems with Plaintiff's position that the 1993 lease agreement is an enforceable contract. Here are a few:

1. Description of Leased Property

[1] "In order to be valid and enforceable, a lease must contain the following essential terms: (1) the names of the parties; (2) a description of the demised realty; (3) a statement of the term of the lease; and (4) the rent or other consideration." *Renguul v. Orak*, 6 ROP Intrm. 334, 337 (1997) (quoting 49 Am. Jur. 2d Landlord and Tenant § 23 (1995)).[2] The lease at issue here includes all of the essential terms, except for one. The description of the demised realty.

ASPLA leased "Mizuho" to Renguul, and included the promise of a map, which never materialized. Although all parties know generally where Mizuho is located and agree that it is a large tract of land, it does not seem that the actual boundaries of Mizuho have ever been delineated.

There appears to be both subjective and objective components to this requirement. First, the parties themselves must understand what they intend to convey and receive. 49 Am. Jur. 2d Landlord and Tenant § 23 (2006) ("In order to be valid, a lease must describe the premises demised with sufficient certainty to indicate what the parties intended the lease to convey; only such premises as are described or properly identified in the lease will pass to the lessee.") Second, the land conveyed must be described in the lease with sufficient specificity so that "a surveyor should be able to locate boundaries by following the description." *Id.* In *Renguul*, the trial court

[2] The same terms remains in effect today. *See* 49 Am.Jur.2d Landlord and Tenant § 22 (2006).

found a lease agreement invalid where "the precise boundaries of the land to be covered by the [lease] Agreement were never established by the parties." 6 ROP Intrm. 337–38. Assuming no map, no surveyor could determine the precise boundaries of the leased land here as the only description is the name "Mizuho."

[2] Parol evidence is admissible to resolve ambiguity and uncertainty in a lease document, or identify the property. 49 Am. Jur. 2d Landlord and Tenant § 23. Plaintiff may try to remedy the lack of a description through parol evidence. However, the current state of the evidence remains that Mizuho is nowhere described with the subjective or objective specificity required.

2. Conflict of Interest

Charles Obichang was Governor of Airai at the time he signed the lease agreement in 1993. He is also Renguul's nephew. In *Renguul et al. v. ASPLA*, 8 ROP Intrm. 282, 284–87 (2001), the Appellate Court affirmed the trial court's decision to invalidate a lease agreement, which reflected self-dealing. Specifically, the trial court found that "members of governments boards may not have a private interest in board contracts and may not vote on matters in which they have conflicts of interest." 8 ROP Intrm. at 285. Although Plaintiff may have arguments to counter this one, the Court has not yet heard them.

Accordingly, at this juncture, Plaintiff cannot make out a *prima facie* case that the 1993 lease agreement is enforceable and that Defendants violated that agreement.

B. Substantial Threat of Irreparable Harm to Plaintiffs

[3] This element has also been found to be the most important: "Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered . . . ." WRIGHT § 2948 at 139. *See also* 42 Am. Jur. 2d Injunctions § 35. "Irreparable harm" does not typically contemplate injuries which can be resolved through monetary damages. *See* 42 Am. Jur. 2d Injunctions § 36 ("Thus, an injury is ordinarily understood to be irreparable if refusing injunctive relief would be a denial of justice because redress cannot be had through money damages, in light of the nature of the act, the circumstances of the person injured, or the financial condition of the person committing the tort.") *See also* 42 Am. Jur. 2d Injunctions § 49 "Injunctions are generally granted only where other relief, such as money damages, is not available or not sufficient as a remedy.") Injury to real property "will be regarded as irreparable so as to warrant injunctive relief where it tends toward the destruction of the complainant's estate or where it is of such a character as to work the destruction of the property as it has been held and enjoyed so that no judgment at law can restore it to him or her in that character." 42 Am. Jur. 2d Injunctions § 54.

Plaintiff cites 42 Am. Jur. 2d Injunctions § 27 for the proposition that although monetary damages are not typically awarded, "a party may be able to obtain

injunctive relief in the rare circumstances that a denial of such relief would likely cause the plaintiff's business to collapse." Plaintiff and the treatise then cite *Amtote Int'l., Inc. v. PNGI Charles Town Gaming Ltd. Liability Co.*, 998 F.Supp. 674 (N.D. W.Va. 1998) and *Warren v. City of Athens, Ohio*, 411 F.3d 697 (6 Cir. 2005). In *Warren*, the U.S. Circuit Court upheld the trial court's grant of a permanent injunction because although the amount of lost profits was measurable for purposes of monetary damages, "future lost profits are much harder to quantify." 411 F.3d at 712.[3]

Plaintiff's situation is distinguishable from the company owner in *Warren*. Here, Plaintiff's losses are quantifiable. Plaintiff explained in her initial request that she is no longer receiving rent from Anderson. That rent adds up to $6,500.[4]

The second prong to Plaintiff's argument is that although the back rent may be quantifiable, the family hardship is not. She alleges that the shortfall has meant that she is no longer able to financially support her children. Although this is not set out in her affidavit, counsel indicates that Max will have to move out if the rent remains unpaid. However, according to the filings and testimony in the Estate case (C.A. Nos. 09-155 and 09-203), only one daughter lives with Plaintiff. Further, it appears that daughter is an adult since she entered into a sublease agreement with Anderson in 2004. It is unclear from the filings why it falls upon Plaintiff to support her adult daughter, nor is it clear why the $6,500 which Anderson allegedly owes, will materially alter Plaintiff's family's well-being in the long run, especially where Max testified to other means of financial support, such as farming, at the hearing concerning her appointment as administratrix of the Estate.

The Court concludes that Plaintiff will have the opportunity to be made whole once the Court reaches a decision based on all of the evidence. Plaintiff does not allege irreparable damage to the real property, nor does she convincingly argue that the harm to her will be irreparable. Further, unlike the cases which Plaintiff cites, her damages are easily quantified. Accordingly, this factor does not tip the scales towards Plaintiff.

C. Weighing the Equities

The Court is to weigh the equities between the movant and the non-movants. "The issuance of a preliminary mandatory injunction requires that the relative inconvenience or injury weigh strongly in favor of the applicant." 42 Am. Jur. 2d Injunctions § 38. ASPLA would no doubt be injured if it was required to disgorge the $6,500 which Anderson has paid as rent. Unlike Max, however, ASPLA offered no evidence that Anderson's rent payments were critical to the state's operations. Accordingly, injury weighs strongly in favor of Max. This does not end the inquiry, however.

[3] Although the court in *Amtote* noted that injunctive relief could hypothetically be available if the company were to collapse, they both denied preliminary injunctions in their specific cases. *See Amtote*, 998 F.Supp. at 678–79.

[4] Apparently, the amount of rent owed will not increase. Anderson's counsel stated that she has since cleared the lot and stopped paying rent in April, 2011.

"An appraisal of the possible outcome of the case on the merits is of particular importance when the court determines in the course of balancing the relative hardships that one party or the other will be injured whichever course is taken . . . ." WRIGHT § 2948.3 at 189. Here, either ASPLA or Plaintiff will be injured depending on the course taken and, as discussed in section A, Plaintiff has not made out a *prima facie* case for victory. Therefore, although the equities weigh in favor of Plaintiff, this factor does not tip the overall balance to Plaintiff.

D. Public Policy

"Focusing on this factor is another way of inquiring whether there are policy considerations that bear on whether the order should issue." WRIGHT § 2948.4. Plaintiff lists the health and safety of Plaintiff and her family. Defendants counter with the public's interest in invalidating fraudulently-procured leases, and stamping out public corruption.

"It is also important to consider . . . the degree to which the private rights of third persons will suffer by the refusal of injunctive relief and whether the injury can readily be compensated for in damages." 42 Am. Jur. 2d Injunctions § 39. Here, the private rights of third parties, beyond Max's family members residing with her, will not be affected if the Court denies the injunctive relief. Accordingly, the Court finds that the public policy factor is a draw.

V. Conclusion

A preliminary injunction is an extraordinary and drastic remedy, which should only be granted when Plaintiff carries the burden of persuasion. She has not done so here, since she has failed to show that:

> (1) she has a substantial likelihood of success on the merits;
> (2) a substantial threat exists that she will suffer irreparable injury if the injunction is not granted; and
> (4) the public interest lies in granting the injunction.

This is not a clear case reasonably free from doubt and Plaintiff has not shown that an injunction is necessary to prevent substantial and irreparable injury, not adequately remediable at law. Accordingly, her motion for a preliminary injunction is **DENIED**.