Renguul v. Orak, 6 ROP Intrm. 334 (1997)

LEBAL RENGUUL
Plaintiff,

v.

JAMES ORAK,
Defendant.

CIVIL ACTION NO. 137-94

Supreme Court, Trial Division
Republic of Palau

Decision
Decided: May 19, 1997

Counsel for Plaintiff: John Rechucher

Counsel for Defendant: Micronesian Legal Services Corporation

JEFFREY L. BEATTIE, Associate Justice:

⊥335 Plaintiff filed this action to eject defendant from certain land in Airai. Having heard the testimony at trial, examined the other evidence adduced by the parties and heard the arguments of counsel, the Court, pursuant to Rule 52 of the Rules of Civil Procedure, makes the following findings of fact and conclusions of law.

Facts

Plaintiff and defendant disagree on many of the material facts. Plaintiff is the lessee of property in Airai under a lease dated July 16, 1993. The lease has an initial term of 50 years, and describes the property leased as "the real property known as Mizuho." Defendant is a relative of the plaintiff. At or shortly after the time the Airai lease was executed, defendant moved into plaintiff's house, which was not on the leased land, and was began staying with plaintiff and taking his meals there. Eventually, Defendant asked plaintiff if he could have some land to use. He said he wanted to farm some land and have a tree nursery. Plaintiff agreed to let him use some land and asked defendant to prepare a document to memorialize the transaction. The purpose of the document was to make sure that plaintiff's other relatives would not question defendant's right to use the property.

Shortly thereafter, defendant presented plaintiff with a document entitled "Land Lease Agreement" dated August 18, 1993 (the "Agreement"). The Agreement states, among other things, that:

I Lebal Renguul and James Orak are both in an agreement and understanding that

> I Lebal Renguul, the Lessor will Lease the said property at Misuho in Airai to the Lessee, James Orak for a period of Forty Years.

At the time the Agreement was executed, plaintiff had shown defendant the general area he was going to be able to use, but plaintiff he had not yet identified exactly which portion of Mizuho he was going to let defendant use. He told defendant that he would place markers on the land later to show him the boundaries.

Shortly after the Agreement was executed, defendant began clearing a portion of the land Mizuho. Plaintiff was aware of this activity, but did not object because the area being cleared was the same area he had indicated defendant could use. Defendant built a small wood and tin farm house on the property and moved into it. He also planted approximately 300 mahogany trees and a like number ⊥336 of betelnut trees on the land. He has planted pineapple and banana as well. Plaintiff was not aware of the precise nature of the farming and nursery activity on the land, but he knew defendant would be living on the land and maintaining a tree nursery on it.

In the spring of 1994, plaintiff built a store building on another part of Mizuho. Although the defendant claims that he is the one that paid for and built the store, the court finds that it was the plaintiff. For one thing, the invoices for materials from Ace Hardware show that they were paid for by check.[1] Defendant said he had no checking account and paid cash for the materials. Undoubtedly, defendant helped out with the labor on occasion. He went to the supply stores with plaintiff's money to purchase the materials. He also helped the carpenter on occasion. But the store was largely built by plaintiff's work crew and entirely at plaintiff's expense. The building permit was issued to plaintiff alone, as were both the Palau and the Airai business licenses.

The store opened for business around March 18, 1994. Plaintiff paid for all of the store merchandise, about $3,000 worth, that stocked the shelves on opening day. Plaintiff hired defendant's wife as a sales clerk and made defendant the manager of the store. Defendant claims that he was a full partner in the store business, but that was never established by a preponderance of the evidence. In any event, defendant and his wife moved into the store, began living there, and ran the store.

About a month after the store opened, the relationship between plaintiff and defendant soured. Plaintiff discovered that defendant had persuaded Airai State to put the alcoholic beverage license into a different name than the one plaintiff had applied for. He ordered defendant out of the store, but defendant refused to budge. This suit was filed shortly thereafter. Later, a peace bond settlement prevented plaintiff from entering the store. In the meantime, defendant operated the store until it went out of business for economic reasons around the end of 1995. Plaintiff never received any money generated from store operations. Defendant and his wife continued to live in the store building, however, and occupy it to this day.

⊥337 Discussion and Analysis

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[1] The fact that defendant's name is on the invoices is of little moment. He is the one who made the trip to Ace to pick up the materials, so it is not remarkable that his name is on the invoices.

Defendant claims that plaintiff cannot evict him from the store building because the store business was a partnership between him and plaintiff. The court finds that the evidence is insufficient to establish any such partnership. Plaintiff contributed all the money to build the store and to stock it with merchandise until he was kept away from the store by the peace bond. The building permit and all business licenses were in plaintiff's name alone. Plaintiff denies that there was any partnership agreement between him and defendant. Defendant submitted into evidence a document called "By-Laws of Mizuho Community Store" which purports to be the bylaws of a corporation owned by plaintiff and defendant. However, they are unsigned and plaintiff never saw the document.

Defendant further claims that he cannot be evicted because the store building is on property in which he holds a leasehold interest pursuant to the Agreement. Plaintiff contends that the Agreement does not constitute a lease because it is lacking in essential terms.

Generally, 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.

49 Am. Jur. 2d *Landlord and Tenant*, § 23 (1995). Here, the Agreement contains the names of the parties and a statement that the term of the purported lease is 40 years. However, the description of the property is not certain enough to enable one to identify the property covered by the Agreement to the exclusion of all other property. Defendant does not claim that the Agreement covers all of the land known as Mizuho, nor does the Agreement itself so indicate. The evidence shows that the precise boundaries of the land to be covered by the Agreement were never established by the parties. The Agreement merely states that

> The said property is along side the road to Aimeliik. The actual size of the said property is three hundred yards alongside the road. It goes back as deep as the dry and wet lands could be utilized for farming purposes.

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The biggest problem with the description of the property is that it gives no indication where on the road to Aimeliik the three hundred yards is situated, nor does it state on which side of the road it is located. Assuming that it is somewhere within the boundaries of Mizuho, it still does not state where along the road the three hundred yards begins or ends. Even defendant testified he did not know where three hundred yards was along the road, though he did state that a stream was to be his boundary. The court finds that the plaintiff never specified the precise boundaries, but only the general area where defendant could farm, intending to place markers later. Accordingly, even considering the parol evidence, the property description is lacking in certainty.

The Agreement fails to specify that any rent is payable. Defendant claims that plaintiff told him that he did not have to pay rent. Plaintiff claims that he intended to charge rent after defendant's farming operation had been in business for a year. "Where the amount of rent is not agreed upon and the contract does not otherwise provide a manner for its definite determination,

the contract is void for uncertainty." *Id.* at § 25. Thus, if one credits defendant's testimony, there is a lack of any consideration to support the Agreement. *See, Cooperative Building Materials v. Robbins & Larkey*, 183 P.2d 81, 85 (Calif. App. 1947) (a provision for the payment of rent and of a transfer of possession of the property are essential elements of a lease). If one credits plaintiff's testimony, the Agreement is void for uncertainty respecting the amount of rent.

Thus, in view of the foregoing, the court finds that the Agreement is not a lease because it lacks the essential terms relating to a description of the property and the amount of rent.

This does not end the discussion, however, because it appears clear that plaintiff intended to allow defendant to use part of the land, and defendant, in reliance on plaintiff's consent to the use, constructed the farm house and planted hundreds of trees on the land. In making these improvements, the defendant acted in reasonable reliance upon plaintiff's statement that he could use a portion of Mizuho for farming and nursery purposes. Plaintiff's statements and his execution of the Agreement lead the court to find that defendant was given a use right in a portion of Mizuho for forty years. Although the precise boundaries cannot be ascertained from the evidence, it is clear that the use right covers the land where the farm structure exists and the land where defendant's mahogany trees, betelnut trees, and crops are growing. The court finds that the use right does not include the land upon ⊥339 which the store building is situate, for it is unlikely that plaintiff would have built the store on land he had given the defendant to use.

The court's conclusion that defendant was given a use right is supported by plaintiff's testimony that he saw defendant building the farm house and did not object because it was being built in the area of Mizuho that plaintiff had told him he could use. Plaintiff also testified that he gave the land for defendant to use as a nursery and for farming. Indeed, the Agreement which plaintiff signed states that defendant is allowed "to establish any frame on construct all structures to accommodate the farming operations."

Plaintiff argues, however, that he canceled the Agreement, whether it be called a lease or a use right. Plaintiff has not cited any authority which supports his contention that a use right may be terminated at will by the grantor. The court holds that, at least where, as here, the grantee has changed his position or acted in detrimental reliance on the use right, it cannot be canceled by the grantor under the circumstances here presented. [2] *See* 28 Am. Jur. 2d *Estoppel and Waiver* § 112 (1966).

Accordingly, judgment will enter in favor of plaintiff and against defendant on the claim for ejectment. Defendant shall have twenty days to vacate the store premises. [3] Defendant shall have judgment on his counterclaim for a judgment "giving effect to the sublease agreement"

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[2] The court recognizes that under custom, certain misbehavior or failure to meet customary obligations may trigger a right to cancel a use right, especially one given by a clan or lineage. However, plaintiff presented no evidence of any customary right to cancel the use right in this case.

[3] By way of an amendment to the complaint, plaintiff also asserted a claim for the reasonable rental value of the store premises. This claim is deemed abandoned and dismissed because it was not pursued at trial and no evidence of the reasonable rental value was offered.

insofar as it seeks peaceful possession of the property where the farm house, nursery trees and farm crops of defendant are situate, all in accordance with this Decision. As stated, the court gives effect to the Agreement only insofar as it recognizes a forty year use right in the land currently used by defendant for the farm structure, mahogany trees, betelnut trees, and crops. Of course, nothing herein prevents defendant from building a new house on the property where the old farm house is located. Count II of the counterclaim is dismissed as moot in that it sought damages in the event that defendant were to lose his ⊥340 trees and crops.