

sufficient factual and legal grounds under Pohnpei state corporate law to liquidate the business and assets of a Pohnpei corporation called Island Cable TV Pohnpei, Inc. The court will therefore appoint a liquidating receiver to begin this process and a hearing will be held to consider the appointment. The parties' submissions about the liquidating receiver are due by February 28, 2014. Liquidation (sale) of the corporation will proceed thereafter unless the circumstances drastically change and "it is established that cause for liquidation no longer exists." 37 Pon. C. § 1-200.

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FSM SUPREME COURT TRIAL DIVISION

JENNIFER HARDEN and WAYNE HARDEN,	)	CIVIL ACTION NO. 2010-018
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
SENIOHRA INEK and the ESTATE OF EWALT INEK,	)	
	)	
Defendants.	)	
_____	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Martin G. Yinug  
Chief Justice

Trial: May 7-8, 2013  
Decided: January 22, 2014

APPEARANCES:

For the Plaintiffs: Joseph S. Phillip, Esq.  
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For the Defendants: Salomon M. Saimon, Esq.  
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HEADNOTES

Contracts – Formation

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration and definite terms. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

Contracts

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

Contracts – Formation; Property – Leases

A lease agreement entered into by the parties was a valid contract because the promise to pay rent in exchange for exclusive use of the property constituted an offer, acceptance, and consideration and the agreement's terms were definite and enforceable. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

Contracts – Interpretation

A contract must be interpreted on an objective basis, based upon the parties' intent at the time of contracting. Harden v. Inek, 19 FSM R. 244, 249-50 (Pon. 2014).

Contracts – Modification

Whether a contract has been modified by the parties thereto is ordinarily a question of fact for the finder of fact. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

Contracts – Modification

Since modification is a common law doctrine in the field of contracts, the court will consider United States decisions as an appropriate source of guidance in analyzing unresolved questions arising in the area of contracts. Under longstanding principles of common law, a contract may be modified with both parties' assent, provided that there is consideration for the new agreement or it is made under circumstances making consideration unnecessary. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

Contracts – Breach – Waiver; Contracts – Modification

A subordinate and separable part of the contract may be waived or modified by the parties without a cancellation of the whole contract. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

Contracts – Modification

When it is clear that the parties did not reach a meeting of the minds necessary to modify the contract, the absence of mutual assent makes the doctrine of modification inapplicable. Harden v. Inek, 19 FSM R. 244, 250 (Pon. 2014).

Contracts – Implied Contract

Since it is an established rule in this jurisdiction that an express contract and an implied contract cannot govern a legal relationship at the same time and since the lease is an express contract that governs the legal relationship between the parties and has a provision which grants the plaintiffs sole physical possession of the property and a separate provision that speaks to the issue of utilities payments, the court may not recognize the existence of an implied in fact contract that would govern these same issues. Harden v. Inek, 19 FSM R. 244, 250-51 (Pon. 2014).

Contracts – Breach – Waiver

Strict and full performance of a contract by one party may be waived by the other party. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Contracts – Breach – Waiver

Waiver must be made intentionally and with knowledge of the circumstances, and can be made expressly or may be implied from the acts of the parties. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Contracts – Breach – Waiver

Waiver is sometimes proved by a party's express declaration or by his undisputed acts or language so inconsistent with a purpose to stand on the contract provisions as to leave no opportunity for a reasonable inference to the contrary, in which case the waiver is established as a matter of law; but more often it is sought to be proved by various species of acts and conduct permitting different inferences and not directly, unmistakably or unequivocally establishing it, in which case it is a question for the finder of fact. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Contracts – Breach – Waiver

A party that has waived enforcement of a certain provision may renew the obligation by giving the other party notice of its intention to subsequently enforce the provision. Since a waiver is not based on consideration, it can be recalled at any time, subject to estoppel limitations. A plaintiff would be estopped from reinstating a contract provision if the defendants could show detrimental reliance on the waiver. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Contracts – Breach – Waiver

When the defendants did not present any evidence of detrimental reliance on the plaintiffs' waiver, the court must conclude that the plaintiffs had the right to reinstate the provisions of section 3 of the lease upon notice to the defendants, and when such notice was provided to the defendants in the form of a letter, the defendants, on receipt of that letter, were obligated to comply with the requirements of section 3 of the lease within a reasonable time. As the defendants have failed to comply with those provisions, they have breached that contract and the plaintiffs are entitled to relief from the court. Harden v. Inek, 19 FSM R. 244, 251 (Pon. 2014).

Contracts – Specific Performance

The equitable remedy of specific performance is where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff, or when damages cannot be computed. Harden v. Inek, 19 FSM R. 244, 251-52 (Pon. 2014).

Contracts – Damages

When the plaintiffs did not present any evidence at trial of damages sustained as a result of the defendants' breach, the court will not award monetary damages against the defendants. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

Judgments; Torts – Nuisance

When the plaintiffs failed to raise the issue of nuisance, or damages arising from nuisance, at trial, that count of the complaint is waived. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

Torts – Trespass

When the plaintiffs have an exclusive leasehold interest in a town lot for the duration of the lease, such a possessory interest is sufficient to support an action for trespass. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

Torts – Damages – Nominal; Torts – Trespass

When the defendants are liable for trespass, but the plaintiff failed to present any evidence of damages at trial, the plaintiff is entitled to nominal damages only, which will be set at one dollar. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

Costs – When Taxable

Plaintiffs, as the prevailing party, will be awarded their reasonable costs. Harden v. Inek, 19

FSM R. 244, 252 (Pon. 2014).

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## COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

### I. BACKGROUND

This case was tried on May 7-8, 2013. The Plaintiffs were represented by Joseph Phillip. The Defendants were represented by Salomon M. Saimon of the Micronesian Legal Services Corporation. At the conclusion of the trial, the parties agreed to the submission of written closing arguments. Plaintiffs' closing arguments were filed on July 22, 2013 and Defendants' closing arguments were filed on July 15, 2013.

The Court having reviewed the testimony adduced at trial and the exhibits that were stipulated to, or otherwise entered into evidence at trial, as well as the arguments of counsel, and having reviewed the parties' closing arguments and other briefs, now finds and determines as follows:

### II. FINDINGS OF FACT

On January 1, 2001, Plaintiff Jennifer Harden and her guardian Plaintiff Wayne Harden entered into a lease (sublease) agreement with Defendants for Kolonia Town Lot No. 019-A-16 for a term of 20 years, with an option for renewal for additional 20 years, at the rental rate of \$700 per month.

The purpose of the lease agreement ("Lease") was to allow Plaintiffs to construct and operate a retail business on the property.

Section 3 of the Lease stipulates that Plaintiffs shall have sole physical possession of the entire premises, free and clear of all occupants.

In Section 3 the Lease further stipulates that Defendants may remain on the land for the duration of the first year, but only in the small house at the rear of the property and only so long as their tenancy does not interfere with the operation of Plaintiff's business.

Section 11 of the Lease states that the Defendants shall not be liable for payments for any utilities used by Plaintiffs on the premises.

The Lease directs in Section 12 that in the event of a breach or default of the terms of the Lease by either party, written notice of the default shall be given directly to the defaulting party ten (10) days before the non-defaulting party may exercise its remedies.

Defendant Seniohra Inek testified at trial that at the time she signed the Lease she did not understand the terms of section 3 of the Lease. She further testified that she could not read the Lease written in the English language, and that a Pohnpeian language translation was never provided.

At trial Defendant Seniohra Inek was shown a Pohnpeian language translation of the Lease that displayed her undated signature. She could not recall whether that was her genuine signature.

At trial Mr. Goodwin Este, the Chief Clerk of the Pohnpei Court of Land Tenure, testified that

where, as here, one party to a lease agreement is an American citizen, a Pohnpeian language translation of the lease must be produced and kept together with the English language lease agreement. Lessors such as Defendants would typically be questioned by the Board of Pohnpei Land Trust before submitting lease documents to the clerk of the Court of Land Tenure. Such questioning would ensure that the parties understood the terms of the Lease.

In light of Mr Etse's testimony, the Court does not find Defendant Seniohra Inek's testimony regarding her unfamiliarity with the terms of section 3 of the Lease to be credible.

At the time of the execution of the Lease, all parties fully understood the terms of the Lease, including the provision mandating that Defendants vacate the premises at the expiration of the first year of the Lease.

Upon the expiration of the first year of the Lease, Defendants continued to reside on the premises, in violation of the clear terms of the Lease. As of the time of the trial, twenty (20) members of the Inek family, including Defendant Seniohra Inek, continued to reside on the premises.

Sometime in the year 2002 Plaintiff Wayne Harden made a verbal request to the Defendants that they vacate the property. Defendants did not comply with this request.

In the year 2003 Plaintiff Wayne Harden made another verbal request to the Defendants that they vacate the property. Defendants did not comply with this request.

In 2004 Plaintiff Wayne Harden made a third verbal request to the Defendants that they vacate the property. Defendants did not comply with this request, and indicated that they did not intend to comply with any similar requests in the future.

At no time did either party attempt to negotiate a modification to the Lease that would legitimize Defendants' unilateral decision to continue to reside on the premises.

Between 2004 and 2010 Plaintiff Wayne Harden did not make any further demands for Defendants to vacate the premises. Plaintiff Wayne Harden testified at trial that he did not evict Defendants because they had no other place to go.

Also, between 2001 and 2010 Plaintiff Wayne Harden did not provide written notice to Defendants that they must vacate the premises, as required in section 12 of the Lease prior to exercising a [legal] remedy, nor did he explicitly reserve the right to enforce section 3 of the Lease. Furthermore, Plaintiffs continued to accept responsibility for paying their rent obligations in full.

The course of performance described above effectuated a waiver on the part of Plaintiff Wayne Harden of the language in section 3 of the Lease which required Defendants to vacate the premises within one year.

After Plaintiffs constructed their retail business, Plaintiff Wayne Harden established an arrangement for shared payment of utilities (electricity and water). Such an arrangement was necessary because Plaintiffs' retail store shared infrastructure with Defendants' residence and so utilities consumption could not be tracked separately.

Plaintiff Wayne Harden established an arrangement for payment of utilities wherein Plaintiffs and Defendants shared the cost of electricity equally, while Defendants paid for seventy five (75) percent of the water consumption.

Defendants accepted the arrangement for sharing the cost of utilities, despite the actuality that Plaintiffs' business consumes substantially more electricity than the share consumed by Defendants. Plaintiffs and Defendants were aware that the arrangement for payment of utilities established by Plaintiff Wayne Harden would result in Defendants effectively subsidizing the electricity utilized by Plaintiffs' business.

Defendants' silence with regards to the cost-sharing arrangement unilaterally initiated by Plaintiff Wayne Harden constituted a waiver of the protections of section 11 of the Lease.

Over ten years, the utilities-sharing arrangement resulted in Defendants' paying approximately \$30,000 for power consumption and \$11,000 for water consumption.

Since April, 2010 the Inek family has been charged for electricity consumption separately from Plaintiffs. During this time the Inek family has been paying only \$20 per month for power despite using the same amount of power on a monthly basis as they did from 2001 through 2010.

Plaintiff Wayne Harden's testimony at trial that he thought the cost-sharing arrangement he established accurately reflected utilities consumption is not credible. Indeed, Plaintiff Jennifer Harden testified that she conducts book-keeping for Plaintiffs' business and that she believes that Plaintiffs use most of the power. This testimony from Plaintiff Jennifer Harden is credible.

On April 21, 2010 Plaintiff Wayne Harden sent a letter to Defendants withdrawing his permission for them to remain on the premises and formally providing 30 days notice for them to vacate the premises. This letter constituted notice to the Defendants of Plaintiffs desire to reinstate the requirements of section 3 of the Lease.

After sending that letter, Plaintiff Wayne Harden disconnected the Inek family from the shared power source. The Inek family then arranged to receive power separately from Plaintiffs. Plaintiff Wayne Harden also attempted to shut off the water to the Inek family, but they threatened him with physical violence should he proceed. As a result Plaintiffs and Defendants continue to share the cost of water.

Throughout the term of the tenancy Plaintiffs have satisfied their obligation to make rent payments through a combination of rent advances (loans), store credit, utilities payments and (partial) payment of Defendants' tax obligations. Plaintiffs have fulfilled their rent obligations through June 4, 2013.

### III. CONCLUSIONS OF LAW

#### A. *Contract Formation*

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration and definite terms. Livaie v. Weilbacher, 13 FSM Intrm. 139, 143 (App. 2005). Where the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm 613, 620 (App. 1996). In this instance, this Court has made a finding of fact (*supra*) that the lease agreement entered into by the parties on January 1, 2001 was a valid contract. The promise to pay rent in exchange for exclusive use of the property constituted an offer, acceptance and consideration. The terms of the agreement were definite and enforceable. The terms of the agreement were the intentions of the parties at the time of entering into the contract. The contract between the parties must be interpreted on an objective basis, based upon the intent of the parties at the time of

contracting. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 79, 86 (Pon. 1997).

B. *Contract Modification*

Whether a contract has been modified by the parties thereto is ordinarily a question of fact for the finder of fact. Davenport Osteopathic Hosp. Ass'n. v. Hospital Serv., Inc., 154 N.W.2d 153 (Iowa 1967). This Court, as the trier of fact, has found (*supra*) that the parties did not modify the contract.

Defendants argue that the parties have modified the Lease, insofar as the Lease has been modified to remove the provision in section 3 that requires Defendants to vacate the property after one year. Modification is a common law doctrine in the field of contracts, and this Court will consider decisions of the United States as an appropriate source of guidance in considering unresolved questions arising in the area of contracts. Black Micro Corp. v. Santos, 7 FSM Intrm. 311, 314 (Pon. 1995). Under longstanding principles of common law, a contract may be modified with the assent of both parties, provided that there is consideration for the new agreement or it is made under circumstances making consideration unnecessary. Hawkins v. United States, 96 (6 Otto) U.S. 689, 24 L. Ed. 607 (1877). Furthermore, a subordinate and separable part of the contract may be waived or modified by the parties without a cancellation of the whole contract. Davis v. Commonwealth, 41 N.E. 292 (Mass. 1895); 17A AM. JUR. 2D *Contracts* § 520 (1991). To be effective as a modification, the new agreement must possess all the elements necessary to form a contract, including mutual assent. Caffrey Farms, Inc. v. Williams Pipe Line Co., 739 F.2d 1366, 1368 (8th Cir. 1984).

It is clear that in this case the parties did not reach a meeting of the minds necessary to modify the contract. Plaintiffs and Defendants never re-negotiated the Lease to allow Defendants to remain on the land in contravention of section 3. Rather, the evidence reflects that Plaintiff Wayne Harden made verbal requests that Defendants vacate in 2002, 2003 and 2004, and Defendants simply refused. In the absence of mutual assent the doctrine of modification is not applicable here, and Defendants' contention that section 3 of the contract was modified must be rejected.

C. *Implied Contract*

Despite the absence of an explicit written or spoken agreement to modify the Lease, it is perhaps possible to infer from the evidence that Plaintiff Wayne Harden's reluctance to exercise his legal remedies between 2002 and 2010 stemmed from an unspoken agreement between the parties that Plaintiffs would decline to enforce section 3 of the Lease, while Defendants would refrain from enforcing section 11 of the Lease which states that the Lessor shall not be liable for payments for any utilities used by Lessee on the premises. As discussed *supra*, Plaintiff Wayne Harden had unilaterally designed a formula for shared utilities payments under which the Inek family effectively subsidized utilities consumed by Plaintiffs' business. Arguably both parties benefitted from an arrangement spanning ten years in which Plaintiffs paid a subsidized rent while Defendants continued to reside in their home.

Although the (unspoken) agreement described above may have been supported by consideration, this Court is powerless to formalize that arrangement. It is an established rule in this jurisdiction that an express contract and an implied contract cannot govern a legal relationship at the same time. Actouka Executive Ins. Underwriters v. Simina, 15 FSM Intrm 642, 651-52 (Pon. 2008); E.M. Chen & Assocs., (FSM), Inc. v. Pohnpei Port Auth., 9 FSM Intrm. 551, 558 (Pon. 2000); *see e.g.*, Ponape Island Transp. Co v. Fonoton Municipality, 13 FSM Intrm. 510, 515 (App. 2005) (contracts are express agreements, and unjust enrichment is a theory applicable to implied contracts). In this case the Lease is an express contract that governs the legal relationship between the parties. The Lease has a provision which grants Plaintiffs sole physical possession of the property and a separate provision

speaks to the issue of utilities payments. Therefore this Court may not recognize the existence of an implied in fact contract that would govern these same issues.

D. *Waiver*

Strict and full performance of a contract by one party may be waived by the other party. District of Columbia v. Camden Iron Works, 181 U.S. 453, 21 S. Ct. 680, 45 L. Ed. 948 (1901). Waiver must be made intentionally and with knowledge of the circumstances, and can be made expressly or may be implied from the acts of the parties. Bennecke v. Insurance Co., 105 (15 Otto) U.S. 355, 26 L. Ed. 990 (1881); Stonega Coke & Coal Co. v. Addington, 73 S.E. 257 (Va. 1912). Sometimes waiver is proved by the express declaration of a party or by his undisputed acts or language so inconsistent with a purpose to stand on the contract provisions as to leave no opportunity for a reasonable inference to the contrary, in which case the waiver is established as a matter of law; but more often it is sought to be proved by various species of acts and conduct permitting different inferences and not directly, unmistakably or unequivocally establishing it, in which case it is a question for the finder of fact. Alsens Am. Portland Cement Works v. Degnon Contracting Co., 118 N.E. 210 (N.Y. 1917); Addicks Servs., Inc. v. GGP-Bridgeland, L.P., 596 F.3d 286, 299 (5th Cir. 2010).

In this case, Plaintiff Wayne Harden's behavior does not unmistakably establish that he waived his contractual right, established in section 3 of the lease, to sole physical possession of Kolonia Town Lot No. 019-A-16 at the expiration of the first year of the contract. Plaintiff Wayne Harden made several verbal requests between 2001-2003, in which he indicated to the Defendants his desire for them to comply with the terms of section 3 of the contract. However, he did not make further such requests between the years 2003-2010. At trial he testified that he did not seek to enforce section 3 of the Lease because Defendants had no place else to go. Furthermore, during the years 2001-2010 Plaintiff Wayne Harden established a system under which Plaintiffs benefited financially from the Inek family's presence by means of subsidies towards Plaintiffs' business' utilities. Under these circumstances it is for the trier of fact to determine whether Plaintiffs waived the one-year-residency provision of section 3. As indicated in the Findings of Fact *supra*, this Court as the trier of fact found that Plaintiffs waived the one-year-residency limitation in section 3 of the Lease until April, 2010, at which time they attempted to reinstate the relevant condition in section 3.

Plaintiffs were entitled to withdraw their waiver. A party that has waived enforcement of a certain provision may renew the obligation by giving the other party notice of its intention to subsequently enforce the provision. Bratton v. Roadway Package Sys., Inc., 77 F.3d 168, 175 (7th Cir. 1996). Since a waiver is not based on consideration, it can be recalled at any time, subject to estoppel limitations. Sergros Caracas de Liberty Mut., S.A. v. Goldman, Sachs & Co., 502 F. Supp. 2d 186, 188 (D. Mass 2007); RESTATEMENT (SECOND) OF CONTRACTS § 247 (1981). A plaintiff would be estopped from reinstating a contract provision if defendants could show detrimental reliance on the waiver. At trial, Defendants did not present any evidence of detrimental reliance on Plaintiffs' waiver, and so the Court must conclude that Plaintiffs had the right to reinstate the provisions of section 3 of the Lease upon notice to Defendants. Such notice was provided to Defendants in the form of a letter delivered on April 21, 2010. Upon receipt of that letter Defendants were obligated to comply with the requirements of section 3 of the Lease within a reasonable time. As Defendants have failed to comply with the provisions of section 3 of the Lease, they have breached that contract and Plaintiffs are entitled to relief from this Court.

E. *Remedy for Breach of Contract*

The appropriate remedy in this instance is specific performance. The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do,



thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff, or when damages cannot be computed. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 126 (Pon. 1993). In this case the only way to ensure that Plaintiffs enjoy the full benefit of their bargain with Defendants is for the Court to order Defendants to comply with all the terms of the Lease, including section 3.

At trial Plaintiffs did not present any evidence of damages sustained as a result of Defendants' breach. Therefore, this Court will not award monetary damages against Defendants.

F. *Nuisance*

The second count of Plaintiffs' Complaint is for nuisance. Plaintiffs failed to raise the issue of nuisance, or damages arising from nuisance, at trial, and so the second count of the complaint is WAIVED.

G. *Trespass*

The third count of Plaintiffs' Complaint is for civil trespass. This Court has determined *supra* that Plaintiffs have an exclusive leasehold interest in Kolonia Town Lot No. 019-A-16 for the duration of the Lease. Such a possessory interest is sufficient to support an action for trespass. Ponape Enterprises Co. v. Soumweji, 6 FSM Intrm. 341, 343 (Pon. 1994). Here, Plaintiffs must prevail in an action for trespass because they have demonstrated that in April, 2010, Plaintiff Wayne Harden made a written request that Defendants vacate the premises, and Defendants refused. Nelper v. Akinanga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 533-34 (Pon. 1998) (a defendant is subject to liability for trespass if he intentionally and without consent remains on the land of another).

Although Defendants are liable for trespass, this Court does not have a basis for awarding damages because Plaintiff failed to present any evidence of damages at trial. Therefore, Plaintiff is entitled to nominal damages only, and such nominal damages shall be set at one dollar. See Carlos Etscheit Soap Co. v. McVey, 17 FSM Intrm. 427, 437 (App. 2011) (in a successful trespass claim where no evidence exists of actual damages the trial court will award nominal damages).

H. *Costs*

Plaintiffs, as the prevailing party, shall be awarded their reasonable costs. Damarlane v. United States, 8 FSM Intrm. 45, 54 (App. 1997). Plaintiffs shall submit their costs to the Court within 20 days of service of this decision on them. Defendants shall then have 10 days to respond to the submission.

CONCLUSION

Accordingly, the clerk shall enter judgment for Plaintiffs Jennifer Harden and Wayne Harden against Defendants Seniohra Inek and the Estate of Ewalt Inek on the claim for breach of contract. Defendants are ordered to comply with section 3 of the Lease by respecting Plaintiffs' right to sole physical possession of Kolonia Town Lot No. 019-A-16 for the duration of the Lease. The Court also grants judgment in favor of Jennifer Harden and Wayne Harden against Seniohra Inek and the Estate of Ewalt Inek in the sum of \$1 for the trespass claim. Plaintiffs are awarded costs, which shall be submitted to the Court as directed above.

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