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Pacific Skylite Hotel v. Penta Ocean
19 FSM R. 265 (Pon. 2014)

established to end before January 21, 2011. It is undisputed that Penta-Ocean paid all of its obligations to the Hotel through January 27, 2011.

For all these reasons the Hotel's claim for breach of contract must fail.

V. COSTS

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

VI. CONCLUSION

Accordingly, the clerk shall enter judgment for Defendant Penta-Ocean Construction Company, Ltd. against Plaintiff Pacific Skylite Hotel on the claim for breach of contract. The clerk shall also enter judgment for Defendants Penta-Ocean Construction Company, Ltd. and Tatsunoske Nishiba individually and as Administration Manager of Penta-Ocean Construction Company Ltd. against Plaintiffs William Ompoy and Ernesto Gomez on the claim for breach of contract. Penta-Ocean Construction Company, Ltd. remains liable for the cost of returning plaintiffs William Ompoy and Ernesto Gomez to the Philippines. Defendants are awarded costs, which shall be submitted to the Court as directed above.

* * * *

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.)	
_____)	

ORDER GRANTING MOTION TO AMEND FINDING OF FACTS; DENYING MOTION TO AMEND JUDGMENT; DENYING MOTION FOR STAY OF JUDGMENT

Martin G. Yinug
Chief Justice

Decided: February 10, 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

Evidence – Witnesses

Judging the credibility of witness testimony is the exclusive responsibility of the justice presiding over the matter. Harden v. Inek, 19 FSM R. 278, 280 n.1 (Pon. 2014).

Judgments

It is not necessary for the court to make findings on undisputed or stipulated facts. Nor are findings required on issues that are not material. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Judgments

Uncontested findings need only be included in the court's findings of fact if they form a basis for its conclusion of law. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Contracts – Breach – Waiver

Since a waiver is not based on consideration, it can be recalled at any time, subject to estoppel limitations. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Contracts – Breach – Waiver; Equity – Estoppel

When the defendants must show detrimental reliance on the plaintiffs' waiver of exclusive possession of a town lot in order to establish the affirmative defense of equitable estoppel, the defendants' argument that burying a family member on the property in 2002 constituted detrimental reliance must fail because burying the family member on the property did not change the defendants' position to their detriment, and they fail to demonstrate that they buried him in reliance on the waiver from the plaintiffs. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Contracts – Breach – Waiver; Equity – Estoppel

Injury, detriment, or prejudice to the party claiming the estoppel is one of the essential elements of an equitable estoppel. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Contracts – Breach – Waiver

The defendants' decision to have additional children did not constitute detrimental reliance on the plaintiffs' waiver when no evidence was presented at trial that would allow the court to conclude that the defendants' family planning decisions were influenced in the slightest degree by reliance on the plaintiffs' waiver. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

Judgments – Alter or Amend Judgment

The court must decline to amend its findings when the proposed finding would require speculation about future events. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

Judgments – Alter or Amend Judgment

The trial court may, in an effort to assist the appellate division in its review of the matter, amend its findings even though the amendments requested by the defendants did not form the basis for the court's conclusions of law. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

Judgments – Alter or Amend Judgment

One of the grounds for amending a judgment under FSM Civil Rule 59(e) is to prevent a manifest injustice. This ground is a catch-all basis for relief, and is usually coupled with another ground. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

Judgments – Alter or Amend Judgment

To alter or amend a judgment to prevent a manifest injustice, it is not enough for the defendants to show that the court's reasoned decision would result in hardship; rather, a successful Rule 59(e) motion will present a flaw in the fact finding or decision making process, and demonstrate that failure to correct the flaw would lead to manifest injustice. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

* * * *

COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

This matter comes before the Court on Defendants' motion to amend the Findings of Fact and the Judgment, filed on February 5, 2014.

Trial commenced in this matter on May 7, 2013 and ended on May 8, 2013.¹ Judgment was entered on January 30, 2014. Defendants contend that the Finding of Facts and Conclusions of Law should be amended to show that Defendants relied to their detriment upon Plaintiffs' waiver of the right to exclusive possession of a parcel of land, and so Plaintiffs are estopped from revoking said waiver. Defendants further contend that the judgment should be amended in their favor, because the judgment, when enforced, would result in Defendants being rendered homeless and such a result is a manifest injustice.

I. RULE 52(b) MOTION

Defendants ask the Court to amend the Findings of Fact and Conclusions of Law to show that they buried Ewalt Inek on the property at issue here. Such burial was performed in 2002. Defendants also ask the Court to amend the Findings to show that the family had more children between 2002 and April, 2010. Finally, they ask the Court to amend the Findings to show that if the judgment is enforced in this case the result would be to render Defendants' family homeless. Defendants rely on Rule 52(b) which states in its entirety:

Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. The question of the sufficiency of the evidence to support the findings may be raised whether or not the party raising the question has made an objection in the trial division to such findings or has made a motion for judgment.

The Court will rely on U.S. federal courts for guidance in interpreting the Rule. See Senda v.

¹ Defendants note in their motion that the law clerk who worked on the trial had left the jurisdiction and a different law clerk assisted in preparing the Findings. In reality, the law clerk who worked on the trial is still employed by the Court. Most importantly, judging the credibility of witness testimony is the exclusive responsibility of the Justice presiding over this matter.

Mid-Pacific Constr. Co., 6 FSM Intrm. 440, 444 (App. 1994). Under common U.S. practice, it is not necessary for the court to make findings on undisputed or stipulated facts. Nuelsen v. Sorensen, 293 F.2d 454, 459 (9th Cir. 1961); 9 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 52.15[2][d] (3d ed. 1999). Nor are findings required on issues that are not material to the case.

The parties do not dispute that Ewalt Inek was buried in Kolonia Town Lot No. 019-A-16 in the year 2002. Nor do the parties dispute that the Inek family has increased in size between the years 2002 and 2010, and that these additional children reside in the Inek family residence on Kolonia Town Lot No. 019-A-16. Finally, the parties also do not dispute that the Inek family has not arranged for an alternative place of residence in the event that they are evicted from their home.² Given that these findings are not contested, the Court need only include them in its Findings of Fact if they form a basis for its conclusion of law.

The proposed Findings presented supra do not form the basis for the Court's conclusion of law, because they are not sufficient to prove that Plaintiffs are estopped from revoking their waiver upon notice to Defendants. 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). To establish the affirmative defense of equitable estoppel, Defendants must show detrimental reliance on Plaintiffs' waiver of exclusive possession of Kolonia Town Lot No. 019-A-16 as promised in Section 3 of the Lease Agreement.

Defendants' argument that burying Ewalt Inek on the property in 2002 constituted detrimental reliance must fail, because burying Ewalt Inek on the property did not change Defendants' position to their detriment, and they fail to demonstrate that they buried Ewalt Inek in reliance on the waiver from Plaintiffs. Injury, detriment, or prejudice to the party claiming the estoppel is one of the essential elements of an equitable estoppel. Level 3 Commc'ns, Inc. v. Federal Ins. Co., 168 F.3d 956, 59 (7th Cir. 1999); 28 AM. JUR. 2d *Estoppel and Waiver* § 83 (2000). Moreover, the injury or prejudice must be actual and material or substantial, and not merely technical or formal. 28 AM. JUR. 2d *Estoppel and Waiver* § 83 (2000). It appears that being able to bury Ewalt Inek near the place where he lived was, if anything, a benefit to the Inek Family. Therefore, the fact of the burial does not establish detrimental reliance.

In addition to failing to establish that the burial site was a legal detriment to the Ineks, they also fail to show that they buried Ewalt Inek in reliance on a waiver from Plaintiffs. At the time of the burial, 2002, Plaintiff Wayne Harden had made an oral request to the Inek family that they vacate the property. The verbal requests in 2002, 2003, and 2004 clearly establish that Plaintiffs did not waive their right to sole physical possession until 2004, at which time Defendants told Plaintiffs that they refuse to leave and Plaintiffs declined to exercise their judicial remedy or make further requests.³ Since Defendants did not rely on the waiver to their detriment in their decision to bury Ewalt Inek in Kolonia Town Lot No. 019-A-16, it is clear that they cannot demonstrate detrimental reliance. See *id.* § 82; Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 195 (Kos. S. Ct. Tr. 2001).

² Defendants urge the Court to make a finding that they would be made homeless if evicted. Although Plaintiffs have not contested such a finding, it would seem speculative in light of the fact that Defendants are free to use the rent paid to them by Plaintiffs towards securing alternative accommodations. It is also important to note that such a finding would not affect the outcome in this case, as will be explained *infra*.

³ The Findings of Fact and Conclusions of Law was vague as to the issue of when the waiver became effective. This order clarifies that issue, and finds that the waiver became effective only in 2004.

Defendants' argument that their decision to have additional children constituted detrimental reliance on Plaintiffs' waiver must also fail. No evidence was presented at trial which would allow the Court to conclude that Defendants' family planning decisions were influenced in the slightest degree by reliance on Plaintiffs' waiver.

Finally, Defendants contend that the Court should amend the findings to show that if the judgment in this case is enforced, it is inevitable that Defendants would be rendered homeless. As such a finding would require speculation about future events, the Court must decline to amend its Findings.

As demonstrated (*supra*), the findings requested by Defendants did not form the basis for the Court's conclusions of law. However, in an effort to assist the Appellate Division in its review of this matter the following findings are HEREBY INCORPORATED into the Findings of Fact and Conclusions of Law issued on January 22, 2014:

- 1) Ewalt Inek was buried in Kolonia Town Lot No. 019-A-16 in the year 2002.
- 2) Plaintiffs did not waive their right to sole physical possession of Kolonia Town Lot No. 019-A-16 as guaranteed in Section 3 of the Lease Agreement until they were told that Defendants would not comply with any request to vacate the property. They were so informed in 2004.
- 3) Defendants' family increased in number between 2001 and 2010, due to the inclusion of additional children. These children reside on Kolonia Town Lot No. 019-A-16.

II. RULE 59(e) MOTION

One of the grounds for amending a judgment under FSM Civil Rule 59(e) is to prevent a manifest injustice. Chuuk v. Secretary of Finance, 9 FSM Intrm. 99, 100 (Pon. 1999). Defendants contend that the hardship they will face if the judgment is enforced is sufficient to show that the judgment represents a manifest injustice. Defendants misunderstand the Rule. This ground in Rule 59 is a catch-all basis for relief, and is usually coupled with another ground. See United States v. York, 890 F. Supp. 1117, 1140 (D.D.C. 1995), *rev'd on other grounds*, 112 F.3d 1218 (D.C. Cir. 1997) (motion seeking reconsideration based on correcting clear error or preventing manifest injustice must provide something new); 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 59.30[5][a], [b] (3d ed. 1999). It is not sufficient for Defendants to show that the Court's reasoned decision would result in hardship. Rather, a successful Rule 59(e) motion will present a flaw in the fact finding or decision making process, and demonstrate that failure to correct the flaw would lead to manifest injustice. Here Defendants argue that the Court failed to properly consider facts which demonstrate that Defendants are entitled to relief under the doctrine of equitable estoppel. As demonstrated (*supra*) the facts presented by Plaintiffs were not material and would not change the outcome in this case.

NOW THEREFORE IT IS HEREBY ORDERED that Defendants' motion to amend the judgment under FSM Civil Rule 59(e) is DENIED.

III. MOTION TO STAY ENFORCEMENT OF JUDGMENT

Defendants ask that the Court stay enforcement of the judgment in this matter pending resolution of its FSM Civil Rule 52 and Rule 59(e) motions. These motions have been ruled upon (*supra*), and so this motion is moot and therefore DENIED.

* * * *