Roberts v. Ha, 13 ROP 67 (2006)

CLEOPHAS ROBERTS,
Appellant,

v.

SOON SEOB HA,
Appellee.

CIVIL APPEAL NO. 04-033
Civil Action No. 03-413

Supreme Court, Appellate Division
Republic of Palau

Decided: March 7, 2006[1]
⊥68
Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: William Ridpath

BEFORE: LARRY W. MILLER, Associate Justice; LOURDES F. MATERNE, Associate Justice; JANET HEALY WEEKS, Part-Time Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

BACKGROUND[2]

On June 10, 1992, Appellant Cleophas Roberts leased two units on the third floor of a residential apartment building (hereinafter, "the premises" or "the units") located in Ngerchemai Hamlet to Appellee Soon Seob Ha. The signed lease agreement included a twenty-year term, while granting Ha the option to renew the lease for an additional twenty-year term. The lease contained no other termination provisions. Rent under the lease was $1000 per month. The lease agreement also contained a provision under which Ha agreed not to permit any waste or nuisance to occur on the premises, or to allow the premises to be used for any unlawful purpose. For his part, Roberts assumed responsibility for any necessary repairs to the interior and exterior of the building, except for any damage caused by Ha or the tenants. The lease reserved in Roberts the right to enter the premises at reasonable times to inspect the units and to perform necessary maintenance and repairs. The lease provided, further, that the premises would be

[1] The court has concluded that oral argument would not materially assist in the resolution of this appeal. ROP R. App. P. 34(a).

[2] The following factual summary has been adapted from that set forth in the Trial Division's Findings of Fact and Conclusions of Law. The parties do not dispute the court's basic factual findings.

surrendered at the end of the lease in the same ⊥69 condition as when Ha took possession, allowing for reasonable use and wear.

The third floor of the apartment building contained two units -- one four-bedroom and one two-bedroom unit. During the course of the lease, approximately fifteen to twenty persons occupied these two units. All of these residents were females employed by Ha as hostesses at Lake Restaurant in Malakal.

Roberts first received a complaint about the condition of the premises in early 1997. In February of that year, Roberts and one of Ha's employees conducted an inspection of the units during which they cited a number of deficiencies, including a lack of a working toilet and shower facilities, clogged kitchen and bathroom drains, broken faucet handles, damaged bedroom doors, and missing furniture.[3] In addition, the security railing on the third floor was loose and the locks on the second and third floor security gates were broken. Following this inspection, Roberts drafted a letter to Ha in which he attributed the damage to the excessive number of persons residing in the units. The letter also informed Ha that other residents had complained about frequent late night parties and gatherings among the third floor residents and male visitors. Roberts warned that continual late night gatherings had caused a second floor tenant to move out. Roberts made some of the necessary repairs, while others were made by Ha. Ultimately, some of the repairs were never made.

Following these 1997 repairs, Roberts did not make regular inspections of the premises. According to his trial testimony, he had not conducted an inspection of the units, or otherwise entered them, in the five years prior to the tenants' vacating of the units in 2003. [4] During this period, the condition of the third story units deteriorated.

In March 2003, one of the third floor tenants informed Roberts that the roof was leaking water into the apartment units. Roberts promptly repaired the roof. In early 2003, Ha's employees residing at the apartment informed him that they had been having problems with peeping toms and other intruders on the premises. The employees also reported a number of maintenance issues with the units. At some point during the first half of 2003, Clarissa Simon, who was employed by Ha as manager of Lake Restaurant, reported these issues to Roberts's son, Cleory, who lived on the first floor of the apartment building. After Simon escorted Cleory around the units, pointing out a number of the problems, Cleory told her that he would make the necessary repairs. He never did so.

Subsequently, in June or July 2003, Ha called Roberts to complain about these security and maintenance problems. On July 14, 2003, Ha addressed a letter to Roberts in which he outlined these problems with the buildings and informed Roberts that he would terminate the lease if the necessary repairs were not made. Upon being handed the letter along with the July rent payment by Simon, Roberts skimmed the letter, refused to sign a document acknowledging receipt, and instructed the employee to return the letter to Ha.

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[3] Although the lease does not indicate it, the apartment units were furnished with a living room couch set and bedroom sets.

[4] Ha, on the other hand, visited his employees at the premises on a monthly basis.

⊥70 On July 22, 2003, Ha wrote a second letter regarding his intent to terminate the lease if the requested repairs were not made. Although Roberts did not receive the letter, [5] his son Cleory read the letter on July 23, 2003, while at Ha's office to collect the July rent. Again, Roberts took no action. On August 14, Ha, through counsel, sent a letter notifying Roberts that he was terminating the lease effective August 31, 2003, due to his failure to make the requested repairs to the units. Following payment of August rent, Ha and his employees vacated the units.

Roberts subsequently filed suit for breach of contract. At trial he argued that Ha breached the lease not because of the condition of the units, but rather because he believed it more economical to house his employees in his own building. Moreover, Roberts argued that any disrepair or deterioration of the units had been caused by overcrowding in the units and the large number of visitors. Following a two-day trial, the trial court rejected these claims and held that Roberts had committed a material breach of contract by failing to properly maintain the units, thus justifying Ha's decision to terminate the lease. Roberts now appeals.

ANALYSIS

Trial court findings of fact are reviewed under a clearly erroneous standard. *Ren Int'l Co. v. Garcia*, 11 ROP 145, 150 (2004). Under this standard, the findings of the lower court will only be set aside if they lack evidentiary support in the record such that no reasonable trier of fact could have reached that conclusion. *Dilubech Clan v. Ngeremlengui St. Pub. Lands Auth.* , 9 ROP 162, 164 (2002). This Court reviews the lower court's conclusions of law *de novo*. *Ren Int'l Co.*. 11 ROP at 150.

In a landlord-tenant relationship, a duty to repair may be imposed on a landlord via an affirmative contractual provision or the implied warranty of habitability. Agreements by a landlord to make certain repairs and to generally maintain the premises are binding. 49 Am. Jur. 2d *Landlord-Tenant* § 574 (1995); Restatement (Second) of Property: *Landlord and Tenant* § 5.5(3) (1977) ("The landlord is obligated to keep the leased property in repair to the extent he has expressly or impliedly agreed to do so.") . In the absence of such an express provision, a landlord may still be held responsible for making such repairs under the implied warranty of habitability. Under this doctrine, "a landlord is required to make repairs and replacements to vital facilities." 49 Am.Jur . 2d, *supra*, § 568. Such a warranty, known alternatively as the warranty of habitability or fitness for human occupation, is implied into all leases via the common law or express statutory provision. *Id.* § 564; Restatement (Second) of Property: *Landlord and Tenant* § 5.5 n.6 (1977) ("there is an implied obligation on the landlord to make the property fit for residential purposes when the tenant enters and to keep the property fit throughout the term"). If the landlord's failure to fulfill an express or implied obligation to repair makes the property unsuitable for the use contemplated by the parties, and the landlord fails to correct the situation within a reasonable time after receiving notice of the defect, the tenant has two possible remedies. 49 Am. Jur. 2d, *supra*, § 579. The tenant may continue the lease and obtain equitable and legal relief, including (1) recovery of damages, (2) rent abatement, (3) use of rent to make the necessary repairs, and (4) withholding of rent. *Id.* ⊥71 Alternatively,

[5] The trial court did not elaborate on the reason that Roberts failed to receive the letter.

the tenant may terminate the lease and recover damages. *Id.*; Restatement, *supra*, § 5.4 (tenant may terminate lease due to landlord's failure to fulfill duty to repair).

In the present case, the lease agreement entered into between Mr. Roberts and Mr. Ha contained a provision stating that the "Lessor shall be responsible for repairs to the interior and exterior of the premises, except for damage caused by the Lessee." Despite this express duty to repair under the lease, Roberts maintains that his failure to make the requested repairs did not constitute a breach of the lease because: (1) he had no duty to make the complained-of repairs because the damage was caused by Ha's employees/tenants; (2) the notice given to Roberts did not specify the items to be repaired nor provide reasonable time in which to make the necessary repairs; and (3) Ha made the repair request in bad faith, after already having decided to vacate the premises.

Roberts first argues that he had no duty to make the necessary repairs because the damage was caused by Ha's employees. The trial court expressly rejected this argument, however, and Roberts cites no evidence suggesting that this ruling was erroneous. Indeed, Mr. Roberts himself admitted during his trial testimony that he had no direct knowledge that tenants had damaged the premises. His conclusion to this effect was based, instead, on his own assumption that they had caused the damage, in light of the overcrowding in the units. While the trial court granted that "some wear and tear can be attributed to the conduct of [Mr. Ha's] employees," the court concluded that the bulk of the problems had arisen due to the fact that "little or no general maintenance had been done" during the life of the building and the lease. [6] *Roberts v. Ha*, Civil Action No. 03-413 (Findings of Fact and Conclusions of Law, Oct. 15, 2004) at 9 (hereinafter, "Trial op."). We find nothing to suggest that this conclusion was clearly erroneous.

Roberts also argues, in the alternative, that he cannot be held to have breached his duty to repair in light of Ha's failure to specify the items to be repaired or a reasonable period of time in which to make the necessary repairs. Again, we are not persuaded. Although Ha's July 2003 letters to Roberts did not set forth the exact nature of the necessary repairs, the trial testimony made clear that even a cursory inspection of the units would have revealed that substantial repairs were immediately necessary. Roberts cites no authority for the proposition that a tenant must specify the exact nature of the necessary repairs. In any event, this argument ignores the fact that Roberts had the opportunity to learn of the nature of the necessary repairs when Simon handed him the July 14 letter. Subsequently, Roberts "skimmed the letter, refused to sign for receipt of the letter, and instructed Ms. Simon to return the letter to [Ha]." Trial op. at 4. Having done so, he cannot now complain that he had no notice of the types of repairs necessary.

We also disagree with Roberts's suggestion that he did not have reasonable ⊥72 time to make the necessary repairs. On July 14, Ha provided a written complaint and request for repairs to Roberts. Not until August 14, a month after the initial letter, did Ha notify Roberts that he would be terminating the lease on August 31. In light of the testimony concerning the severe

[6] Roberts also suggests that the general state of disrepair in the units during the summer of 2003 did not render the units uninhabitable. In light of the testimony by various tenants that the faucets on both the kitchen and bathroom sinks were broken, the toilet was broken and required a bucket to flush, and that there was no doorknob on the front door, we have no trouble upholding the trial court's conclusion that the implied warranty of habitability had been violated.

deterioration of the units, we believe one month was a reasonable period of time for Roberts to make or, at the very least, begin making the necessary repairs. The trial court did not err in finding that failure to make such repairs within that period constituted a breach of the lease agreement permitting Ha to terminate the lease.

Finally, Roberts argues that Ha's complaints about the conditions of the units, and his requests for repairs, were made in bad faith. Specifically, Roberts contends that Ha only lodged these complaints after he had already decided to break the lease and move his employees into apartment units in one of his own buildings. The trial court found that Roberts had presented no evidence in this regard, and Roberts has not demonstrated otherwise.

CONCLUSION

For the reasons set forth above, we affirm the trial court's judgment.