Estate of Rechucher v. Seid, 14 ROP 85 (2007)
ESTATE OF EUSEBIO RECHUCHER,
Appellant/Cross-Appellee,

v.

ALAN SEID,
Appellee/Cross-Appellant.

CIVIL APPEAL NO. 06-007
Civil Action No. 98-76

Supreme Court, Appellate Division
Republic of Palau

Argued: April 16, 2007
Decided: April 17, 2007

Counsel for Appellant: Raynold B. Oilouch

Counsel for Appellee: Mark Doran

BEFORE: KATHLEEN M. SALII, Associate Justice; JANET HEALY WEEKS, Part-Time Associate Justice; J. UDUCH SENIOR, Associate Justice Pro Tem.
⊥86
Appeal from the Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

SALII, Justice:

This matter involves a dispute regarding the proper interpretation of a real estate lease and an agreement to pay commissions. Both parties have appealed. The Estate of Rechucher (hereinafter "Rechucher") argues that the trial court misinterpreted and misapplied the commission agreement in two respects. Alan Seid (hereinafter "Seid") claims that the court erred when it denied his claims for reimbursement of overpaid rent, breach of contract, and attorney's fees. For the reasons discussed below, one aspect of the trial court's decision regarding the commission agreement is reversed. The decision is affirmed in all other respects.

I. BACKGROUND

Estate of Rechucher v. Seid, 14 ROP 85 (2007)

On November 24, 1993, Eusebio Rechucher, Ngerketiit Lineage, and Ngerukebid Clan[1] agreed to lease to Seid approximately 106,509 square meters of land at a rate of $30 per square meter. Recognizing that Seid intended to assign his interest in the lease to a third-party developer, Ngerukebid Clan agreed to initiate a quiet title action to ensure that Seid and/or his assignee would be able to develop the property unhindered. On the same day, the same four parties entered into a separate agreement pursuant to which Rechucher, Ngerketiit Lineage, and Ngerukebid Clan agreed to pay Seid 10% of the rental price in consideration for his role in arranging the sublease of the property to a third party (hereinafter, the "commission agreement").

As required by paragraphs 3.a. and 3.b. of the lease, Seid paid $100,000 within six months of the execution of the lease. The money was divided equally among the three lessors and triggered the initiation of the quiet title action. When the lessors became embroiled in a series of disputes concerning ownership of the leased land, it became clear that title would not be finally adjudicated before the final rent payment of $3,194,270 came due on November 24, 1995. Pursuant to paragraph 6.a. of the lease, Seid deposited the balance of the rent into an escrow account, to be divided among the lessors based on their proportional ownership of the leased property as ultimately determined by the courts.[2]

Based on a survey conducted as part of the quiet title action, the courts found that the leased property encompassed 109,262 square meters, rather than the 106,509 square meters mentioned in the lease agreement. It was also determined that Ngerukebid Clan, one of the named lessors, did not own any of the leased property, that Rechucher owned 63,598 square meters of the leased property, and that Ngerketiit Lineage owned 2,750 square meters. Persons and entities who are not ⊥87 parties to the lease or the commission agreement owned the remaining 40,161 square meters of the leased property.

On November 14, 1995, the lease was held valid against all of the parties to the quiet title action. Based on the judicial determinations of ownership, Rechucher requested a disbursement of funds from the escrow account at the lease rate of $30 for every square meter he owned, for a total of $1,907,940. Seid objected, arguing that Rechucher owed him his commission and asking the court to award him 10% of the amount payable to Rechucher under the lease. The trial court, the Honorable R. Barrie Michelsen, presiding, found in favor of Seid and awarded him $163,805.65 in commissions.[3] Although Justice Michelsen noted that Seid was receiving less than 10% of the amount specified in paragraph 3.c. of the lease, he distributed the escrow money held by the court and declared the case "over." *Ngerukebid Clan v. Ngerketiit Lineage*, Civil Action Nos. 94-108 and 94-121 (Order dated 10/9/98). Seid was advised that, if he thought he was owed additional money under the commission agreement, he would have to file and plead a breach of contract claim under a new cause number.

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[1] The spelling of the Clan's name varies throughout the appellate record. The Court has opted to use the spelling used in the quiet title action.

[2] For reasons that have not been explained by the parties, Seid deposited $3,195,000, rather than the $3,194,270 set forth in the lease agreement, into the escrow account.

[3] Because of credits and set-offs arising over the course of this transaction, the amount Seid requested in 1998 was $167,424, less than 10% of the gross rent paid to Rechucher. Nevertheless, it is clear that Seid's claim for a commission was successful and that he was awarded almost exactly what he requested at the time.

This action was filed by Seid on March 4, 1998, alleging that Josephine, Wakina, and Theodosia Ulengchong were trespassing on the leased property and that Rechucher had breached the lease agreement by failing to deliver the premises free and clear. The complaint was amended in September 1999 to assert a claim under the commission agreement. Seid specifically alleged as follows:

> 32. Under the terms of the Commission Agreement, RECHUCHER was to pay to plaintiff SEID an amount equal to ten per cent (10%) of the lease proceeds paid to RECHUCHER.
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> 33. RECHUCHER owns 63,598 square meters within the leased premises, and was entitled to receive the sum of $1,907,940.00 as principal.
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> 34. Pursuant to paragraphs "3.a." and "3.b." of the lease, defendant RECHUCHER received $33,333.00 as rent for the leased premises.
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> 35. On or about July 17, 1998, defendant received the sum of $1,987,773.43 as lease proceeds for the land owned by RECHUCHER within the leased premises.
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> 36. On or about October 9, 1998, plaintiff received the sum of ⊥88 $163,805.65 as a partial payment of the 10% commission due from RECHUCHER and from the Ngerketiit Lineage.
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> 37. Defendant RECHUCHER owes plaintiff the balance of the amount due under the Commission Agreement in an amount to be proven at trial, and in the minimum amount of $38,304.99.

Amended Complaint at 7.

On August 24, 2004, Seid filed a motion for summary judgment seeking to recover the portion of the initial $100,000 payment that was paid to Rechucher, the $50,000 Seid paid to the Ulengchongs to get them to vacate the leased property, $10,000 in attorney's fees incurred in this case, and $155,423.05 in commissions. The new demand for commissions was almost four times more than the amount stated in the Amended Complaint and was based on a radically different theory. Whereas Seid had previously demanded from each lessor 10% of the gross rents paid to that person or entity, Seid now argued that Rechucher and Ngerketiit Lineage were jointly liable for 10% of the entire lease amount. This change had a dramatic effect on the calculations because 40% of the leased property was owned by persons and entities who had not signed the commission agreement and were therefore under no obligation to pay Seid his 10%. Seid demanded that Rechucher and Ngerketiit Lineage pay the commission on the remaining 40,161 square meters and asked that the deficit be divided between them.

On December 28, 2004, Justice Michelsen denied Seid's claims for overpaid rent ($33,333), the amount paid to the Ulengchongs ($50,000), and attorney's fees ($10,000). He

granted Seid's claim based on the commission agreement, however, finding that "Defendant Rechucher is liable to Plaintiff for 95.8% of $155,621.35 (the total unpaid commission) - or $149,085.25 - with interest accruing from October 9, 1998 at 9% simple interest, per annum." Order on Partial Summary Judgment Motions at 1 (filed 12/28/04). Following additional motion practice, the Honorable Larry W. Miller found that Rechucher was entitled to additional rent under the lease because he owned more of the leased land than had originally been thought. Justice Miller awarded Rechucher $73,830 in additional rent (2,461 square meters at $30 each), but reduced that amount by 10% to reflect Rechucher's commission obligations under the commission agreement. On January 31, 2006, Justice Miller entered a judgment in this matter that encompassed both Justice Michelsen's December 28, 2004, order and the additional rent determination. Both parties filed timely appeals.

II. STANDARD OF REVIEW

We review the trial court's findings of fact for clear error. *Ongidobel v. ROP*, 9 ROP 63, 65 (2002). Under this standard, the factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Dilubech Clan v. Ngaremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002). Conclusions of law, including the ⊥89 court's interpretation of a contract, are reviewed *de novo*. *Palau Marine Indus. Corp. v. Pac. Call Inv., Ltd.*, 9 ROP 67, 71 (2002).

III. ANALYSIS

A. Seid's Claim for Overpaid Rent

Seid argues that the payments he made pursuant to paragraphs 3.a. and 3.b. of the lease constitute an overpayment of rent and that Rechucher should refund the $33,000 he received under those paragraphs. The rent provisions of the lease are not a model of clarity: after stating that "[t]he total consideration for the rent of the premises" shall be $3,195,270, the lease requires Seid to make three separate payments totaling $3,294,270. These provisions are irreconcilable and, not surprisingly, have generated this dispute. Seid maintains that the "balance" due under paragraph 3.c. of the lease should have been $3,095,270, which, when added to the earlier $100,000 payment, would equal the $3,195,270 mentioned in the introductory paragraph of section 3. *See Ngerukebid Clan v. Ngerketiit Lineage*, Civil Action Nos. 94-108 and 94-121 (Motion for Return of Funds Paid to the Clerk of Courts Under Lease Agreement at 4 (filed 4/9/98)). While it is clear that there is an error in the lease,[4] it is not clear where the error lies.

[4]Rechucher argues that the seemingly contradictory numbers set forth in section 3 can be explained by reference to an unsigned option agreement, pursuant to which Rechucher and Ngerketiit Lineage agreed to give Seid additional time in which to find a sublessee. Under Rechucher's theory, the $100,000 payment required in paragraphs 3.a. and 3.b. is not rent, but rather the price negotiated by the parties in exchange for an option. Although there is some ambiguity regarding the total amount Seid was to pay under section 3, the purpose of the three payments is clear from the face of the lease: they are consideration "for the rent of the premises." There is no indication that the $100,000 was intended as payment for an option, and Rechucher cannot create an ambiguity by reference to extrinsic evidence. *In re Estate of Tmetuchl*, 12 ROP 171, 172 (Tr. Div. 2004). In addition, section 14 of the lease states that "all terms, conditions, covenants, and agreements between the parties relating to the use and occupancy of

When asked to interpret a contract, the Court's goal is to ascertain the parties' mutual intent at the time of contracting. *See* RESTATEMENT (SECOND) OF CONTRACTS § 201 cmt. c (1981) ("the primary search is for a common meaning of the parties, not a meaning imposed on them by the law."). Under Palauan law, courts look first to "the actual language used in a contract to discern the parties' intent." *Baulbei Clan v. Melekeok State Pub. Lands Auth.*, 11 ROP 117, 120 (2004). The words used in the contract are assigned their ordinary and plain meaning "unless all parties have clearly intended otherwise." *Airai State v. ROP*, 10 ROP 29, 32-33 (2002). "Where the parties have attached the same meaning to a promise or agreement or a term thereof, it is interpreted in accordance with that meaning." RESTATEMENT (SECOND) OF CONTRACTS § 201(1) (1981). Given that section 3 of the lease is internally inconsistent, the language ⊥90 of the contract is not very helpful. Nevertheless, the Court must determine whether the parties intended that Seid would pay $3,195,270, as stated in the introduction to section 3, or $3,294,270, as stated in the sub-paragraphs of section 3. A general principle of contract interpretation is that "specific terms and exact terms are given greater weight than general language" (RESTATEMENT (SECOND) OF CONTRACTS § 203(c) (1981)), suggesting that the detailed payment schedule set forth in the subparagraphs of section 3 "is more likely to express the meaning of the parties" (RESTATEMENT (SECOND) OF CONTRACTS § 203 cmt. e (1981)). In addition, the parties' conduct during the months and years immediately following the execution of the lease suggests that they intended the specific rent provisions of paragraphs 3.a., 3.b, and 3.c. to govern. Seid made each of the three specified payments, on time and in the designated amounts, without reservation or conditions. Rechucher and his co-lessors accepted their portions of the payments. There is no indication in the lease or in the conduct of the parties that, at the time the lease was executed, anyone thought that Seid would be entitled to a refund upon payment of the "balance" due under paragraph 3.c. Because the parties' actions in performing a contract are "often the strongest evidence" of the contract's meaning (RESTATEMENT (SECOND) OF CONTRACTS § 202 cmt. g (1981)), Seid's demand for a refund of those amounts paid under paragraphs 3.a. and 3.b. of the lease fails.

Justice Michelsen did not address the thorny contract interpretation issues raised by section 3 of the lease agreement, instead finding that Seid has no standing to assert a claim for overpayment because he had assigned all of his rights and obligations under the lease to a third-party developer. On November 24, 1995, Seid and Kuo Yu Development Corporation entered into a Project Agreement whereby Seid assigned to the developer his "entire right, title and interest in and to the Lease for a term of fifty (50) years . . . ." On appeal, Seid argues that he did not assign any claim for damages that he may have had against the lessors because such a cause of action is independent of the possessory rights granted by the lease. Seid's interpretation of the Project Agreement is unreasonable given the breadth of the language used: all rights and obligations arising out of the lease are assigned to the developer without limitation. Had the parties intended to assign only the right of possession, they could have said so. As written, the assignment is clearly broad enough to cover a claim for overpaid rents: such a claim arises out of payments required by the lease, and the validity of the claim cannot be evaluated without

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the premises described herein" are contained within the lease. The parties made no effort to incorporate the alleged option agreement into the lease, either directly or indirectly, and this Court finds that Rechucher's proposed interpretation is unreasonable given the language of the contract.

reference to the lease. Seid offers no reason why the Court should arbitrarily limit the assignment to only the right of possession.

The trial court's denial of Seid's claim for $33,333 in overpaid rent is affirmed on both of the grounds discussed above.

B. Breach of Contract Damages Related to the Removal of the Ulengchongs

This action was initially filed by Seid to force the removal of Josephine, Wakina, and Theodosia Ulengchong from a portion of the leased property owned by Rechucher. Seid alleged that the Ulengchongs were trespassing on the leased property and that ⊥91 Rechucher had breached the lease agreement by failing to deliver the premises free and clear. On July 24, 1998, Justice Michelsen granted Seid's motion for partial summary judgment and entered an order directing the Ulengchongs to vacate the premises at the earliest possible time. A few weeks later, Seid paid the Ulengchongs $50,000 in exchange for their promise to move off the leased land without appealing the July 24th order. Alleging that Rechucher breached the covenant of quiet enjoyment by failing to remove the Ulengchongs and by opposing Seid's efforts to do so, Seid sought to recover from Rechucher the $50,000 he paid to the Ulengchongs.

Justice Michelsen found that Seid lacked standing to assert a breach of contract claim arising out of the lease's covenant of quiet enjoyment. The Court agrees. Pursuant to the Project Agreement signed on November 24, 1995, the right to the quiet and peaceful enjoyment of the leased property was assigned to Kuo Yu Development Corporation. Seid gave up any rights or interests he may have had under the lease and cannot assert a claim for its breach. Although Seid has a separate contractual obligation to ensure the developer's "quiet possession of the Property, including removing all persons and structures residing or located on the Property," that duty arises out of the Project Agreement with the developer, not the lease. Having divested himself of all interest in the lease, Seid entered into a separate agreement with the developer in which he promised to relocate persons and remove structures from the leased property in exchange for $100,000. The fact that Seid chose to pay off the Ulengchongs in an attempt to satisfy his obligations under the Project Agreement does not give rise to a breach of contract claim against Rechucher under the lease.

C. Seid's Claim for Attorney's Fees

Pursuant to section 17 of the lease, a party who prevails in a breach of contract or enforcement action under the lease is entitled to an award of reasonable attorney's fees. In his oral decision, Justice Michelsen denied Seid's request for attorney's fees in this matter because "both parties have prevailed in this case. I don't think any award of attorney's fees is appropriate because both parties won some and both parties lost some." Transcript of Summary Judgment Arguments (Tr.) at 89. Although the Court agrees that Seid's claim for attorney's fees should be denied, we affirm the decision on other grounds. The trespass claim on which Seid was successful was filed against the Ulengchongs, not Rechucher. The only other claim on which Seid was successful was his demand for commissions, but that claim arose out of the commission agreement, not the lease. The commission agreement does not contain an attorney's fee

provision comparable to section 17 of the lease. Thus, none of the claims on which Seid prevailed in the trial court triggered an award of attorney's fees under section 17. Seid's claim for fees must, therefore, fail.

D. Rechucher's Obligations under the Commission Agreement

On November 24, 1993, Rechucher, Ngerketiit Lineage, and Ngerukebid Clan agreed to pay Seid "a ten percent (10%) finders fee in consideration for Alan Seid executing a lease of this date to 106,509 square meters . . . . The ten percent (10%) ⊥92 finders fee shall be on gross rents but paid from the payment required under paragraph 3.c. of said lease agreement." The question on appeal is whether, at the time the agreement was executed, the parties intended that each lessor (a) would pay 10% of the gross rents it actually received under the lease or (b) would be responsible for the entire commission amount, regardless of how much land they actually owned. Rechucher favors the former interpretation while Seid argues for the latter.

The trial court agreed with Seid. Justice Michelsen concluded that, although the commission agreement was full of ambiguities, it unambiguously entitled Seid to 10% of the gross rents paid under paragraph 3.c., for a total of $319,427. Tr. at 115. Because Ngerukebid Clan owned none of the leased property and the other owners had not signed the commission agreement, Justice Michelsen reasoned that Rechucher and Ngerketiit Lineage had to make up any shortfall in the commission payments. Thus, Rechucher, who owned 63,598 square meters, was held liable for 95.8% of the outstanding commission, while Ngerketiit Lineage, which owned 2,750 square meters, was assigned the remainder.

The Court disagrees with Justice Michelsen's underlying premise that Seid is entitled to 10% of $3,194,270.[5] The commission agreement simply says that Ngerketiit Lineage, Ngerukebid Clan, and Rechucher agree to pay a 10% finders fee "on gross rents but paid from the payment required under paragraph 3.c. . . . ." Although the reference to paragraph 3.c. may have been intended to establish the total amount of the commission, that is not the only reasonable interpretation of the agreement. It is also possible that the reference to paragraph 3.c. was intended to identify the pot of money from which the commission was to be paid. Under this interpretation, the lessors agreed to give Seid a finders fee, but only if he actually found a sublessee and made the final rent payment. The lessors would not have to come up with the money at the time the lease was signed, instead relying on Seid to deduct the 10% commission from the paragraph 3.c. payment. If, on the other hand, Seid could not find an investor and chose to walk away from the deal, there would be no commission owed because it could not be "paid

[5]Seid makes the unsupported argument that his right to a commission of $319,427 has already been finally adjudicated. When deciding whether Seid was entitled to some portion of the escrow fund in *Ngerukebid Clan v. Ngerketiit Lineage*, Civil Action Nos. 94-108 and 94-121, Justice Michelsen noted that the commission due on $3,194,270 (the amount set forth in paragraph 3.c. of the lease) is $319,427. Because this finding of fact was not relevant to Justice Michelsen's ultimate decision, it is not *res judicata* in this matter. Given that the order was issued in a different civil action, it is also hard to imagine how the law of the case doctrine would apply. More to the point, Justice Michelsen recognized that the "scope and effect of the commission agreement is outside the boundaries of this judgment," and considered the matter anew in the context of this litigation. Absent some guidance from Seid on why he believes Justice Michelsen's October 1998 statement precludes this Court from conducting a *de novo* review of the contract interpretation issues raised by the parties, Seid's argument is rejected.

from the ⊥93 payment required under paragraph 3.c." Based solely on the language of the commission agreement, therefore, it is not clear whether the reference to paragraph 3.c. was intended to establish the amount of Seid's commission, or merely to identify the source of the payments.

The structure of the lease/commission arrangement suggests that the parties intended that the three lessors would receive rents and be liable for commissions in an amount equal to their proportional share of the leased property, despite the then-existing uncertainties regarding who owned which parcels. Paragraph 6.b. of the lease, for example, specifically provides that each lessor is only "entitled to receive a proportionate share of the total sum payable under Section 3c above in an amount equal to the proportional size that any land that such Lessor has been determined to own within the premises bears to the total size of the premises." Paragraph 3.d. allows for the adjustment of the total rent paid if, as a result of the final judgment in the quiet title action, the size of the leased property were altered. Thus, both the amount due and the allocation of funds paid under paragraph 3.c. would vary to achieve the parties' goal of giving each owner $30 per square meter, no more and no less, for land they actually owned. In this context, it is not unreasonable that the commission agreement's reference to a finders fee "on gross rents but paid from the payment required under paragraph 3.c." means the rents actually paid to each of the lessors.

Given that the language of the commission agreement is ambiguous, the Court must determine what the parties intended at the time of contracting. Until very recently, the parties had assumed that the 10% commission would be paid out of the rent payment required under paragraph 3.c. of the lease and that each of the lessors would pay the commission only on rent it received, not on rent paid to other parties. There is no evidence that the lessors paid, or that Seid thought he was entitled to, the 10% commission upon the execution of the lease. Rather, the parties acted as if the commission were tied to the final rent payment under paragraph 3.c. During both the quiet title action and the first six years of this case, Seid consistently took the position that Rechucher owed him an "amount equal to ten per cent (10%) of the lease proceeds paid to Rechucher." Amended Complaint at ¶ 32 (emphasis added). *See also Ngerukebid Clan v. Ngerketiit Lineage*, Civil Action Nos. 94-108 and 94-121 (Affidavit of Seid dated 7/6/98) ("I have recently been informed by both Eusebio Rechucher, and by Francisco Armaluuk on behalf of Ngerketiit Lineage, that neither of them intends to honor the obligation set forth in the Commission Agreement and the lease agreement to pay me 10% of the pro rata share of their pending proceeds from the escrow funds.") (emphasis added). It was not until August 2004, almost eleven years after the commission agreement was executed, that Seid first argued that he was entitled to the entire $319,427 and that Rechucher had to pay the commission on land owned by other persons and entities.

As noted above, "[w]here the parties have attached the same meaning to a promise or agreement or a term thereof, it is interpreted in accordance with that meaning." RESTATEMENT (SECOND) OF CONTRACTS § 201(1) (1981). Prior to August 2004, both ⊥94 parties interpreted the commission agreement to mean that Rechucher would owe Seid 10% of whatever Rechucher received in rent payments following the final judgment in the quiet title action. Had Seid believed he was entitled to the full $319,427 regardless of who owned the leased property, he would have deducted that amount from the money he placed into the escrow account, as

authorized by the commission agreement. He did not, however, instead noting in July 1998 that "the commission payment to me became impracticable until a resolution of the quiet title action, since other claimants made their interests in the premises known to me, and they were not a party to the Commission Agreement. Since I was only entitled to 10% of the gross rents that would be paid to Ngerukebid Clan, and to Ngerketiit Lineage and Eusebio Rechucher, and because I desired to have the project move forward for the benefit of all parties, I consented to deposit the entire gross rents for the premises with the Clerk of Courts." *Ngerukebid Clan v. Ngerketiit Lineage*, Civil Action Nos. 94-108 and 94-121 (Affidavit of Seid dated 7/6/98) (emphasis added). The gross rents paid to the three lessors ultimately totaled $1,990,440, with the remaining money in the escrow account going to parties who did not sign the lease or the commission agreement. Because the parties' common interpretation of the commission agreement is the best possible evidence of their intent at the time of execution, the Court finds that the parties intended that Rechucher be liable for commissions only to the extent he actually owned the leased land. The trial court's interpretation and award of $149,085.25 is reversed. Based on undisputed information set forth in the appellate record, this claim will be remanded to the trial court for entry of judgment in favor of Seid in the amount of $26,988.35, plus prejudgment interest.[6]

E. 10% Commission on "Excess" Land

On January 31, 2006, Justice Miller determined that Rechucher was entitled to additional rent under the November 24, 1993, lease because the actual area of the leased land exceeds the amount recited in the lease by 2,461 square meters. The trial court awarded Rechucher $73,830 in rent on the "excess" land (2,461 square meters x $30), but reduced that amount by 10% to reflect the commission due to Seid under the commission agreement. Rechucher appeals, arguing that the amount due under the commission agreement was fixed because the agreement refers to 106,509 square meters and the gross rents payable under paragraph 3.c. This argument fails for two reasons. First, Rechucher waived the argument below by failing to object to Seid's claim for commissions on the "excess" land and conceding the point at oral argument. Rechucher's belated attempt to challenge the $7,380 commission through a motion to alter or amend the judgment was rejected by the trial court as untimely. Second, the rents due ⊥95 and owing under paragraph 3.c. of the lease were designed to fluctuate depending on the actual acreage contained within the boundaries of the leased premises. Thus, the reference to paragraph 3.c. in the commission agreement incorporates the same flexibility as is contained within the lease. Modifications to the size of the leased premises and the amounts due to various individuals were anticipated and provided for in both the lease and the commission agreement. The trial court's application of the commission agreement to the "excess" land should be affirmed.

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[6]Seid is entitled to additional commissions of $26,988.35 based on the following calculations:

- Rechucher received rent at $30 per square meter for 63,598 square meters, for a total of $1,907,940
- the 10% commission on $1,907,940 is $190,794
- Seid has already received $163,805.65 in commissions out of the escrow account, leaving an outstanding balance of $26,988.35.

IV. CONCLUSION

For all of the foregoing reasons, the trial court's denial of Seid's claims for overpaid rent, breach of contract damages, and attorney's fees, as well as the denial of Rechucher's claim regarding the commission on "excess" land, are affirmed. Because the parties intended that each lessor would pay a 10% commission on rents paid to them under the lease, the trial court's award of $149,085.25 to Seid is reversed and this matter is hereby remanded to the trial court for entry of judgment on the commission claim in the amount of $26,988.35, with interest accruing from October 9, 1998 at 9% simple interest, per annum.