Schmull v. Doran, 16 ROP 96 (2008)
YUKIO M. SCHMULL,
Appellant,

v.

MARK DORAN,
Appellee.

CIVIL APPEAL NO. 07-056
Civil Action No. 02-342

Supreme Court, Appellate Division
Republic of Palau

Decided: December 11, 2008[1]

Counsel for Appellant: Johnson Toribiong
Counsel for Appellee: Pro Se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

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

PER CURIAM:

Appellant Yukio M. Shmull appeals both findings of a bifurcated trial, arguing that the trial court erred in denying his claims and granting Appellee Mark Doran's counterclaim in a landlord-tenant dispute. Appellee failed to file a response brief in opposition to the appeal. The trial court found that Appellee, the tenant, effectively terminated the rental lease between the parties in October, 2001. Additionally, the court found that Appellant, the landlord, was not entitled to back rent for the subsequent five years p.97 simply because some of Appellee's personal property remained in the rental unit after Appellee vacated it in November, 2001. We affirm the trial court's determinations.

BACKGROUND

Appellant and Appellee entered into a one-year lease on February 26, 1998, whereby Appellee agreed to pay $500 per month to rent a unit for use as an office. At the expiration of the one-year term, the parties signed another one year lease, to terminate on February 25, 2000, by its own terms, at the rate of $450 per month. Both leases provided that either party could terminate the lease with sixty days prior written notice. At the end of the second year, the parties did not sign an additional lease, but Appellee remained in the unit, paying monthly rent, with the

[1]The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

consent of Appellant. At trial, Appellant contended that the second lease contained a holdover provision, wherein Appellee would become a holdover tenant if he remained in the unit after the expiration of the lease. Appellee testified that he never saw this holdover provision before trial and the trial court credited his testimony, finding that there was no such provision at the time the second lease was signed.

Appellee paid rent monthly until September, 2001, when he became deficient on his rent. Appellant so informed him, and in October, 2001, the parties had a discussion regarding termination of the lease. After this discussion, Appellee believed the lease was terminated and moved his law practice out of the office space by November, 2001. Because Appellee did not pay rent for the months of September and October, 2001, Appellant refused to allow Appellee to remove his personal property from the office. As collateral for the back-rent, Appellant unilaterally decided to withhold couches, chairs, file cabinets and numerous other items in the office until the rent was paid. There was no such collateral provision in either lease signed by the parties.

In March, 2002, Appellee sent Appellant a check for $500, which Appellant received. Appellant, however, continued to withhold Appellee's property, despite this payment of back rent. For the following five years, Appellee did not make further payments and Appellant refused to return the items of personal property. Despite Appellee's absence from the property, Appellant considered the tenancy in effect because Appellee's property was still in the unit. Because of this, Appellee demanded back rent for every month that he held the property in the unit, refusing to re-let the unit or give the personal property back to Appellee. After five years, Appellant demanded over $22,000 in back rent from Appellee. Appellee, on the other hand, considered the lease terminated in November, 2001, and back rent for September, 2001, paid by his $500 payment in March, 2002.

In October, 2002, Appellant filed a complaint against Appellee, seeking $4,439 in back rent. Appellee counterclaimed for damages to his personal property locked in the office for a year. The trial was bifurcated and a decision on Appellant's claim was rendered in July, 2006. The trial court found that the provisions of the signed leases terminated on February 25, 2000, after the expiration of the second one-year lease term. One of those provisions was the requirement of sixty days written notice before p.98 termination of the lease, which thus had no effect after February, 2000. The court concluded that the months Appellee occupied the unit after that date were as a tenant-at-will. Because tenancies-at-will terminate upon fair notice by either party, the court found that Appellee terminated the lease during his conversation with Appellant in October, 2001. This termination was reinforced in November, 2001, when Appellee attempted to completely vacate the property. This termination halted any accruing rent, as there was no express written provision stating otherwise. Additionally, the court found that Appellant failed to present by a preponderance of the evidence that the March, 2002, payment was not a full payment of all outstanding debts. Lastly, the court held that Appellant's failure to mitigate his damages by re-letting the unit precluded an award for damages for back rent for the five years that the unit remained vacant.

In the second half of the bifurcated trial, the court granted Appellee's counterclaims for

damage to his furniture held in the unit for five years. Appellant sur-claimed for back rent starting on July 19, 2006, as the court's judgment stated that Appellee was entitled to remove his property from the unit on that date, and he did not do so. The court found that Appellant had no right to hold the property as collateral for failure to pay rent, and awarded Appellee the fair market value of the furniture at the time Appellant began to hold it. In denying Appellant's sur-claim for rent starting on July 19, 2006, the court again stated that possession of Appellee's property did not entitle Appellant to the payment of rent.

STANDARD OF REVIEW

This Court reviews the trial court's findings of fact for clear error. *Ongidobel v. ROP*, 9 ROP 63, 65 (2002). The trial court's conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps* , 8 ROP Intrm. 317, 318 (2001). Appellant's first challenge, to the trial court's finding of fact as to the date the lease was terminated, will be reviewed for clear error. His second challenge, to the award of damages to Appellee, will be reviewed *de novo*.

DISCUSSION

A. Termination of the Lease

Appellant claims that the trial court erred in finding that the lease was terminated by Appellee in October, 2001. He argues that because Appellee continued to possess a key to the unit, left his office sign on the roof, and failed to remove his personal belongings, he did not effectively vacate the unit, and therefore did not terminate the lease. The trial court found that Appellee gave notice of his intent to terminate the lease in October, 2001, and attempted to vacate the unit thereafter, thus terminating the lease. Additionally, the court found that leaving furniture and possessing a key to the unit did not rescind the termination of the contract by Appellee, nor did these facts entitle Appellant to charge rent from Appellee. We agree with the trial court and affirm its findings.

Upon expiration of a set lease period, a tenant who remains in possession of the premises becomes either a holdover tenant, or a tenant at p.99 will, depending on the consent of the landlord. BLACK'S LAW DICTIONARY (7th ed. 1999) at 1477. When a landlord consents, a tenancy at will is created. This is a tenancy of unfixed terms, and may be terminated upon fair notice. *Id*. While this law is not spelled out by previous Palauan case law, the Restatement (Second) of Property clearly defines a tenancy at will as one that "endures only so long as both the landlord and the tenant desire." RESTATEMENT (SECOND) OF PROPERTY § 1.6 (1977). Typically, some sort of notice is required to terminate this kind of tenancy, but the definition itself requires that both parties must wish for the tenancy to continue if it is to survive. *Id*. Because there is no controlling statute or case law on this topic in the Republic of Palau, Restatements take the effect of binding precedent. 1 PNC § 303.

The Restatement (Second) of Property states that, where a tenant fails to pay rent that is due, the landlord has two options in pursuing a remedy: (1) recover the amount due; or (2) terminate the lease if the amount is not paid promptly after a demand. RESTATEMENT (SECOND)

OF PROPERTY at § 12.1. Notably, the landlord has no option of withholding the tenant's property as collateral and continuing to charge rent. In fact, the Restatement discourages landlords from using self-help measures to remedy tenant breaches. RESTATEMENT (SECOND) OF PROPERTY § 14.2 (2). Moreover, if the tenant abandons the property, the landlord has two options under the Restatement: (1) accept the tenant's offer of surrender and terminate the lease; or (2) notify the tenant that he will attempt to re-let the property to relieve the tenant of his obligations for remainder of the rental period. *Id*. at § 12.1 (3).

In the matter currently before the Court, Appellee became a tenant at will on February 25, 2000, when the second lease expired. The terms of the signed leases were no longer in effect, including the requirement that either party give sixty days written notice before terminating the lease. Rather, in accordance with the law of tenancies at will, either party needed only to give fair notice to the other to terminate the lease. The trial court found that Appellee did give such notice, in October, 2001, and that this notice terminated the lease. That determination was proper, and should not be reversed.

Even if this notice by Appellee had not been given, his abandonment of the property (except for the items being held by Appellant), gave Appellant only two options: accept this as an effective termination or attempt to re-let the property. Appellant did neither of these, and therefore the trial court was correct in denying his claims for five years of back rent. Thus, there was no clear error in the trial court's determinations of fact, and we affirm those findings.

B. The Counterclaim and Sur-Claim

Appellant contends that the court erred in denying his sur-claim for back rent after July, 2006, and in granting Appellee's counterclaim for damages to his property. The trial court held that Appellant was not entitled to back rent for the months that Appellee's possessions remained in the rental unit after the court's order directing Appellee to remove them. The court again reasoned that leaving furniture in a rental unit does not entitle a landlord to charge rent on that p.100 unit; this is especially the case where the landlord barred his tenant from removing the property. Additionally, the trial court found that Appellee was entitled to reasonable damages to his furniture because they were improperly held by Appellant as a remedy for nonpayment of rent. Again, because the Restatement is clear that holding furniture is not a remedy for a tenant's failure to pay rent, Appellant wrongfully held Appellee's property, and should be held liable for its deterioration. Therefore, the trial court's finding is affirmed.

The Restatement (Second) of Property does not provide a landlord with the remedy of holding a tenant's personal property as collateral for back rent. RESTATEMENT (SECOND) OF PROPERTY at § 12.1. Because Appellant had no right to do this, he is not entitled to any judicial remedy as a result of holding the property. Furthermore, he is liable for the damage caused to the property as a result of this improper holding. Therefore, we agree with the trial court's findings and affirm.

C. Rent for October, 2001

One issue not specifically raised on appeal, nor discussed by the trial court, is whether Appellant is entitled to back rent for the month of October, 2001. The trial court found that Appellant failed to present by a preponderance of the evidence, the amount he was owed in back rent. However, we find that there was sufficient proof, offered by both parties at trial, that Appellee continued to occupy the rental unit during the month of October, 2001. Although he terminated the lease that month, as a matter of equity, he should have to pay rent for that month. The $500 payment in March, 2002, only covered the rent for the month of September, 2001. In this respect only, this Court reverses the trial court's denial of Appellant's claim for back rent, as it was error to find that there was insufficient proof of rent owed for the month of October, 2001. The trial court is directed to award Appellant $450 in damages for that month only.

CONCLUSION

The Court hereby **AFFIRMS** the determinations reached by the trial court for both parts of the underlying bifurcated trial. However, the Court hereby **DIRECTS** the trial court to award damages in the amount of $450 to be paid by Appellee to Appellant for rent the month of October, 2001.