IN THE SUPREME COURT OF GUAM

GOVERNMENT OF GUAM,
Plaintiff-Appellant/Cross-Appellee,

v.

WSTCO QUALITY FEED & SUPPLY,
Defendant-Appellee/Cross-Appellant.

Supreme Court Case No.: CVA17-017
Superior Court Case No.: CV1379-10

OPINION

Cite as: 2019 Guam 16

Appeal from the Superior Court of Guam
Argued and submitted on May 18, 2018
Hagåtña, Guam

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BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; JOSEPH N. CAMACHO, Justice *Pro Tempore*.

CARBULLIDO, J.:

[1] Plaintiff-Appellant/Cross-Appellee the Government of Guam ("Government") appeals from a final judgment entered by the Superior Court. In the proceedings below, the Government filed a quiet title suit against Defendant-Appellee/Cross-Appellant WSTCO Quality Feed & Supply ("WSTCO"). Following a bench trial, the Superior Court found for WSTCO. We reverse and remand for further proceedings not inconsistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] In 2006, the Guam Ancestral Lands Commission ("GALC") and WSTCO entered into a lease ("Lease"), under which WSTCO leased a portion of land in Barrigada from GALC to construct and operate a slaughterhouse business. The Lease was captioned as a "license," but the Superior Court found that the intended effect and operation of the instrument was to establish a leasehold, a finding that the Government concedes on appeal, *see* Appellant's Br. at 5 (Oct. 17, 2017). The initial term of the Lease was one year; the term was renewable annually at the option of WSTCO. The Lease contemplated that WSTCO would eventually pay GALC a percentage of the gross sales derived from operating the slaughterhouse. To exercise its option, WSTCO was required to give notice to GALC sixty days prior to April 30 of each year.

[3] In 2007, 2008 and 2009, WSTCO made payments to renew the Lease, and in each case also filed a "Notice of Renewal" with the Department of Land Management ("DLM"); these Notices of Renewal were then purportedly forwarded to GALC. *See* Record on Appeal ("RA"), tab 155 at 2 (Finds. Fact & Concl. L., June 2, 2017); *see also* Transcript ("Tr.") at 102:7-104:10 (Trial, Sept. 15, 2016); Tr. at 72:15-25 (Trial, Sept. 14, 2016); RA, tab 60, Exs. 8, 20, 23 (Def.'s

Am. Ex. List, July 23, 2013). These payments were late, but were accepted without objection. RA, tab 155 at 2 (Finds. Fact & Concl. L.). The parties have not produced copies of cashed checks for these years; however, WSTCO filed a Notice of Renewal for 2007 in May—after April 30—allegedly because of a miscommunication between WSTCO and its then-attorney. *See* RA, tab 60, Ex. 8 (Def.'s Am. Ex. List); *see also* Tr. at 102:15-103:8 (Trial, Sept. 15, 2016). The 2008 and 2009 Notices of Renewal were each filed with DLM in March. *See* RA, tab 60, Exs. 20, 23 (Def.'s Am. Ex. List); *see also* RA, tab 155 at 2 (Finds. Fact & Concl. L.).

[4] On May 26, 2009, GALC informed WSTCO that Guam Economic Development Authority ("GEDA") had taken over management of the Lease under a Memorandum of Understanding between GALC and GEDA, and that all communications and payments regarding the Lease were to be routed through GEDA acting as GALC's agent. *See* RA, tab 155 at 3 (Finds. Fact & Concl. L.); *see also* Tr. at 35:4-22 (Trial, Sept. 14, 2016); RA, tab 60, Exs. 4, 9 (Def.'s Am. Ex. List). Approximately two months later, counsel for GALC sent a letter to WSTCO stating that GALC intended to terminate the Lease and requesting discussions to arrange for termination. Nothing in the record indicates WSTCO responded to these letters. In June 2010, however, WSTCO filed another Notice of Renewal with DLM, and in July 2010, WSTCO attempted to deliver the related annual payment to GEDA, which GEDA rejected.[1] *See* RA, tab 155 at 5-6 (Finds. Fact & Concl. L.) ("In July 2010, WSTCO attempted . . . ."); RA, tab 60, Ex. 11 (Def.'s Am. Ex. List); Tr. at 131:21-133:24 (Trial, Sept. 15, 2016) (Gina Mendiola testifying she attempted delivery to GEDA in July 2010). On July 12, 2010, GALC's counsel sent a letter to WSTCO's counsel stating that the Lease was revoked and canceled, noting that

[1] WSTCO does not challenge this specific finding on appeal. *See* Appellee's Br. (Dec. 18, 2017); Appellee's Reply Br. (Jan. 31, 2018).

GALC had not received timely notice of renewal. RA, tab 155 at 5 (Finds. Fact & Concl. L.); RA, tab 60, Ex. 13 (Def.'s Am. Ex. List).

[5] Subsequently, the Government filed a quiet title action. WSTCO counterclaimed, alleging monetary damages because of the Government's actions. The Superior Court dismissed WSTCO's counterclaim for lack of subject matter jurisdiction.

[6] After a bench trial, the Superior Court ruled that WSTCO's leasehold interest was reinstated. The Government timely appealed. WSTCO timely cross-appealed the dismissal of its counterclaim.

II. JURISDICTION

[7] This court has jurisdiction over appeals from a final judgment. *See* 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-29 (2019)); 7 GCA §§ 3107(b), 3108(a) (2005).

III. STANDARD OF REVIEW

[8] "Findings of fact made following a bench trial are reviewed for clear error." *Guam Resorts, Inc., v. G.C. Corp.*, 2013 Guam 18 ¶ 33. Legal conclusions and issues of contract interpretation are reviewed *de novo*. *Id.* ¶¶ 33-34. In general, mixed questions of law and fact are reviewed *de novo*. *Hawaiian Rock Prods. Corp. v. Ocean Hous., Inc.*, 2016 Guam 4 ¶ 13.

IV. ANALYSIS

A. The Option to Renew the Lease Expired Under Its Terms in 2010

[9] The first issue we must address is whether the Lease terminated on April 30, 2010, according to its terms. The Government argues that "if the agreement terminated on April 30, 2010, as the government intended, what happened after April 30, 2010, is irrelevant," and that WSTCO did not respond to the Government's overtures requesting Lease termination until after the Lease expired. Appellant's Br. at 12; *see also* RA, tab 20 at 2-3 (Am. Compl., Jan. 4, 2012)

(claiming GALC considered the license terminated on April 30, 2010); Tr. at 27:7 (Trial, Sept. 15, 2016) (testimony of Anita Orlino that the "license expired"). This specific contention requires that we address whether the Lease had expired under its terms when WSTCO had attempted to renew it.

[10] Whether the Lease expired on April 30, 2010, depends on the language of the Lease, which we interpret *de novo*. *See HRC Guam Co. v. Bayview II L.L.C.*, 2017 Guam 25 ¶ 55. Under *de novo* review, we first look to the plain meaning of the contract. *Id.* ¶ 60; *see also Ramiro v. White*, 2016 Guam 6 ¶ 19 (quoting *Wasson v. Berg*, 2007 Guam 16 ¶ 10); 18 GCA §§ 87104-87105 (2005).

[11] Section 1(a) of the Lease explicitly states that WSTCO retained the option to extend the initial annual lease term for successive annual terms and that WSTCO "*shall exercise* each such option to extend the terms of this [Lease] *by giving* notice in writing to [GALC] at least 60 days prior to the end of the term of this [Lease] then in effect." RA, tab 60, Ex. 3 at 4 (Def.'s Am. Ex. List) (emphases added). According to the Lease, each term expired on April 30 of each year. *Id.* We find nothing ambiguous about this language, as it "supports only one reasonable interpretation"—namely, that WSTCO had to give notice sixty days before April 30 of each year if it intended to exercise the option to renew. *See Leon Guerrero v. Leon Guerrero*, 2014 Guam 6 ¶ 18; *cf. Duenas v. George & Matilda Kallingal, P.C.*, 2012 Guam 4 ¶¶ 13-14 (rejecting interpretation that contract language meant something other than its plain meaning); *Bank of Guam v. Flores*, 2004 Guam 25 ¶¶ 18-21 (rejecting parol evidence intended to alter plain meaning of contract). Even WSTCO does not contest that this provision is susceptible to only one interpretation, and its arguments presuppose that this provision should operate as written. *See* Appellee's Br. at 4-28. Questions of breach and related termination rights that might arise

therefrom, as argued at some length, are therefore inapposite if the offer to renew for a successive term expired, under the Lease, because of failing to satisfy the condition precedent in Section 1(a).

[12] As for all offers, "[b]y requiring acceptance within a stated period of time, the expiration of that period automatically terminates the power of acceptance." 3 *Corbin on Contracts* § 11.8 (1996) (collecting cases). Where an option "specifies the time for notice of acceptance, it is almost universally held, in both law and equity, that the stated time is to be regarded as of the essence, whether expressly so stated or not." *Id.* § 11.17 (collecting cases). Courts uniformly recognize the general rule that failing to give timely notice, when required, results in expiration of the option under its terms. *See, e.g.*, *SDG Macerich Props., L.P. v. Stanek Inc.*, 648 N.W.2d 581, 585-86 (Iowa 2002); *Romain v. A. Howard Wholesale Co.*, 506 N.E.2d 1124, 1127-28 (Ind. Ct. App. 1987); *Brick Plaza, Inc. v. Humble Oil & Ref. Co.*, 526 A.2d 1139, 1140-41 (N.J. Super. Ct. App. Div. 1987); *Simons v. Young*, 155 Cal. Rptr. 460, 466 (Ct. App. 1979); *Conrad Milwaukee Corp. v. Wasilewski*, 141 N.W.2d 240, 243 (Wis. 1966); *Koch v. H & S Dev. Co.*, 163 So. 2d 710, 722 (Miss. 1964); *Wachovia Bank & Tr. Co. v. Medford*, 128 S.E.2d 141, 144 (N.C. 1962); *Mathews v. Kingsley*, 100 So. 2d 445, 446, 449 (Fla. Dist. Ct. App. 1958). This accords with the general rule that options may be exercised only in strict compliance with their terms. *See, e.g.*, *JWS Refrigeration & Air Conditioning, Ltd. v. Charles Young Constr. Co.*, D.C. CV. No. 86-0059A, S. C. CV. No. 1262-85, 1987 WL 109891, at *2 (D. Guam App. Div. July 16, 1987).

[13] Some jurisdictions recognize special equitable considerations that excuse strict compliance. *See SDG Macerich*, 648 N.W.2d at 588-89 (collecting cases recognizing exception but finding it inapplicable); *see also Koch*, 163 So. 2d at 724 ("[I]n the absence of equitable

considerations, . . . such notice must be given, or the right of renewal cannot be enforced."). *See generally* 3 *Corbin on Contracts* § 11.17 ("There are some special circumstances (sufficient to invoke a court's equitable powers) under which the strict enforcement of the time limit would result in forfeiture."). For instance, courts have sometimes found that substantial compliance with a condition may be sufficient. *See, e.g., Trinity Realty I, LLC v. Chazumba, LLC*, 931 N.E.2d 510, 512-13 (Mass. App. Ct. 2010). While the rule of strict performance is therefore not "unvarying," *see Vanguard Diversified, Inc. v. Review Co.*, 313 N.Y.S.2d 269, 271-72 (App. Div. 1970) (explaining when "substantial compliance" applies, rather than the general rule of "strict compliance"), courts have generally found the standard of substantial compliance to apply in contexts involving conditions precedent or covenants that do not relate to accepting an option within a stated period of time. *See id.* at 271-72 (applying a substantial compliance standard for covenants to comply with governmental regulations and keep premises in good repair, because these "rest[] upon an intention ancillary to the major consideration inherent in the lease" and are "not immediately ascertainable . . . under the circumstances present at the time of demand to perform"); *see also Trinity Realty*, 931 N.E.2d at 511-13 & n.1 (applying substantial compliance standard to find a tenant validly exercised an option to renew where alleged defaults related to tenant's use of storage space and late transmittal of sales reports). These cases are distinguishable from instances, like here, where an optionee fails to accept within an expressly stated period of time. *Cf. Guy Dean's Lake Shore Marina, Inc. v. Ramey*, 518 N.W.2d 129, 132 (Neb. 1994) (collecting cases and finding that "[a] tenant has no right to the renewal term unless the option is exercised in a timely manner in strict accordance with the specifications of the lease agreement"). As is the case here, acceptance of an option within a stated period is a determinable event within the control of the optionee.

[14] While it appeals to the court's equitable powers, WSTCO notably asserts no equitable grounds for departing from the rule of strict compliance for renewal of the option, but instead focuses on whether a breach of the Lease gave GALC the right to terminate.[2] *See* Appellee's Br. at 14-36. Given the thrust of this argument and the trial court's decision on the matter—both of which depend on the premise that GALC implicitly waived its right to timely renewal notices, *see* RA, tab 155 at 11 (Finds. Fact & Concl. L.); *cf. Koch*, 163 So. 2d at 723-24 (considering waiver as exception to strict compliance)—we must therefore consider whether GALC waived its right to receive timely renewal notices. We turn to that question.

B. GALC Did Not Waive Its Right to Enforce the Lease's Timely Notice Requirement

[15] "Waiver is the intentional relinquishment of a known right." *Guam Hous. & Urban Renewal Auth. v. Dongbu Ins. Co.*, 2001 Guam 24 ¶ 16, *amended on reh'g by* 2002 Guam 3. "A waiver can . . . be shown by the affirmative acts of a party or by conduct that supports the conclusion that waiver was intended." *Id.* ¶ 18; *see also Scheetz v. IMT Ins. Co. (Mut.)*, 324 N.W.2d 302, 304 (Iowa 1982). "When the waiver is implied, intent is inferred from the facts and circumstances constituting the waiver." *Scheetz*, 324 N.W.2d at 304. In some cases, courts have held that a landlord's acceptance of rent under a lease subject to a term of renewal—either alone or combined with other equitable factors—may constitute an implied waiver of a notice requirement. *See, e.g.*, *Beck v. Strong*, 572 S.W.2d 484, 489-91 (Mo. Ct. App. 1978); *Fun Prods. Distribs., Inc. v. Marters*, 559 P.2d 1054, 1058-59 (Alaska 1977); *McIntyre v. Coker*, 150 So. 2d 220, 224 (Ala. 1963) (collecting cases). *See generally* William B. Johnson, Annotation, *Waiver or Estoppel as to Notice Requirement for Exercising Option to Renew or Extend Lease*,

[2] As discussed above, if the option expired under its terms as a result of failing to satisfy the condition precedent of notice in Section 1(a), then questions of breach and related termination rights are moot.

32 A.L.R.4th 452 Art. 2 (1984) (collecting cases). *But see Guy Dean's*, 518 N.W.2d at 131-33; *Bekins Moving & Storage Co. v. Prudential Ins. Co. of Am.*, 221 Cal. Rptr. 738, 740-42 (Ct. App. 1985).

[16] On the record before us, we find no factual basis to invoke the court's equitable powers to depart from the general rule of strict compliance. *Cf. Fid. & Columbia Tr. Co. v. Levin*, 221 N.Y.S. 269, 275-76 (Sup. Ct. 1927). GALC accepted rent payments through 2009. In June 2010, WSTCO filed a Notice of Renewal with DLM after the Lease expired under its terms on April 30, 2010. Then, in July 2010—two months after the Lease expired—GEDA explicitly refused WSTCO's attempted rent payment. RA, tab 155 at 5 (Finds. Fact & Concl. L.). The record thus shows WSTCO attempted to pay rent and file the Notice of Renewal after WSTCO's power to accept the option had expired. Even if we assume, *arguendo*, GALC may have waived prior late notices or payments, WSTCO was on written notice that GALC wanted to terminate the Lease for approximately a year before its attempted rent payment in July 2010, yet nothing in the record indicates that WSTCO attempted to respond to GALC's stated desire to terminate the Lease. RA, tab 155 at 3 (Finds. Fact & Concl. L.); RA, tab 60, Ex. 10 (Def.'s Am. Ex. List); *see also* Tr. at 37:13-38:6, 43:1-4 (Trial, Sept. 14, 2016).[3]

[17] Based on this evidence and our review of the entire record, we therefore hold that the trial court erred when it found that GALC had waived the right to enforce the renewal provision of the Lease. *See* RA, tab 155 at 11 (Finds. Fact & Concl. L.). Consistent with its plain language, the Lease expired under its terms on April 30, 2010, when WSTCO violated the condition precedent that it provide timely notice of renewal—a condition that we find was not waived by

[3] The fact that WSTCO was on *notice* of GALC's stated desire to terminate the Lease as early as 2009 holds irrespective of the altogether separate question of whether the Open Government law *barred* GALC's termination of the Lease, which is a question we need not reach. *See infra* note 4.

GALC for the 2010-2011 term. Our conclusion follows other cases where courts have declined on the facts before them to find sufficiently compelling equitable factors to deviate from the general rule that options must be exercised in "strict accordance with the specifications of the lease agreement." *Guy Dean's*, 518 N.W.2d at 131-33; *see also SDG Macerich*, 648 N.W.2d at 588-89; *Norton v. McCaskill*, 12 S.W.3d 789, 794 (Tenn. 2000); *Crown Constr. Co. v. Huddleston*, 961 S.W.2d 552, 558-59 (Tex. Ct. App. 1997); *W. Sav. Fund Soc'y of Phila. v. Se. Pa. Transp. Auth.*, 427 A.2d 175, 179 (Pa. Super. Ct. 1981); *McVey v. Simone*, 424 N.Y.S.2d 265, 266-67 (App. Div. 1980); *Ahmed v. Scott*, 418 N.E.2d 406, 411 (Ohio Ct. App. 1979); *Koch*, 163 So. 2d at 728. We similarly find that no sufficiently compelling facts exist for us to exercise our equitable powers, and we conclude that GALC did not, in 2010, waive its right to enforce strict compliance with the notice requirement in Section 1(a) of the Lease. On this basis, the Lease expired under its terms on April 30, 2010. We need not reach the remainder of the parties' arguments.[4]

C. We Need Not Reach the Superior Court's Dismissal of WSTCO's Counterclaim

[18] The parties also raise significant issues related to sovereign immunity. *See* Appellant's Br. at 22-26; Appellee's Br. at 36-41. Particularly, WSTCO challenges the Superior Court's

[4] This includes the Government's argument that sovereign immunity applies to bar what it calls "judicial renewal" of the Lease, *see* Appellant's Br. at 22-26, as well as WSTCO's counter-assertion that this argument is barred because it is raised for the first time on appeal, *see* Appellee's Br. at 31-33. Because the Lease expired under its terms on April 30, 2010, we need not reach the Government's claim that sovereign immunity barred "judicial renewal" of the Lease. We also decline to reach the question of whether GALC violated the Open Government Law, 5 GCA § 8101 *et seq.*, by failing to produce proper recordings of the meeting at which GALC decided to terminate the Lease. *See* Appellee's Br. at 24-25; *see also* Tr. at 12-26, 51 (Trial, Sept. 15, 2016). At trial, in the context of *evidentiary* objections, WSTCO argued that GALC violated the Open Government Law by failing to adequately maintain records of their meetings. *See* Tr. at 10-21 (Trial, Sept. 15, 2016). The trial court found that issues regarding the Open Government Law were not properly before it because WSTCO did not plead a violation of the Open Government Law, RA, tab 155 at 10 (Finds. Fact & Concl. L.), and on the record and arguments presented on appeal, we find no sufficiently persuasive reason to disturb this finding. In addition, we need not reach the question of whether GALC separately violated the Open Government Law because the Lease nevertheless expired under its terms on April 30, 2010.

dismissal of its counterclaim for lack of subject matter jurisdiction. *See* Appellee's Br. at 36-41; Appellee's Reply Br. at 2-7; *see also* RA, tab 67 (Answer & Re-stated Countercl., Nov. 19, 2013). WSTCO essentially argues that the Government waived sovereign immunity to compulsory counterclaims when it sued as plaintiff. *See* Appellee's Br. at 36-41. However, our holding that the Government may quiet title because the option to renew the Lease expired under its terms in 2010 resolves WSTCO's counterclaim, because WSTCO had sought damages based on the alleged wrongful termination of the Lease. *See* RA, tab 5 at 3-4 (Answer & Countercl., Sept. 17, 2010); RA, tab 67 at 4 (Answer & Re-stated Countercl., Nov. 19, 2013). Because we find the Lease expired under its terms, the Government cannot have wrongfully terminated or breached the Lease. Thus, WSTCO's counterclaim fails as a matter of law, and we need not reach the issue of sovereign immunity or express any opinion on the Superior Court's reasoning regarding sovereign immunity when it dismissed WSTCO's counterclaim.

V. CONCLUSION

[19] We **REVERSE** the Superior Court's Judgment dated July 11, 2017, and **REMAND** with directions to enter judgment quieting title in favor of the Government of Guam and for any other proceedings not inconsistent with this opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
JOSEPH N. CAMACHO
Justice *Pro Tempore*

/s/
KATHERINE A. MARAMAN
Chief Justice