

**JAMES MILNE, Plaintiff**

**v.**

**NEIAR MOSES, and TOD WHITAKER, Defendants**

**Civil Action No. 405**

**Trial Division of the High Court**

**Marshall Islands District**

**May 7, 1971**

Action to determine rights under lease of land, Utirikan *Wato*, Rita Island. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that payment to one of a number of owners of leased premises, there being no provision relating to whom payment should be made, does not put lessee in default and such payment is reasonable and proper.

**1. Landlord and Tenant—Leases—Payment of Rent**

Payment to one of three having control and "ownership" who leased the land rather than a divided payment to each of the three does not put the lessee in default on the lease.

**2. Landlord and Tenant—Leases—Payment of Rent**

Where there was no provision as to whom payment should be made, as among the three owners of leased premises, and lessee could not reasonably be expected to know the amount of each of the three shares, lessee's payment of rent to either of the lessors was reasonable and proper.

**3. Judgments—Summary Judgment**

Summary judgment is available only when there is no dispute as to any substantial question of fact and one of the parties is entitled to a judgment as a matter of law.

**4. Judgments—Summary Judgment**

Summary judgment as a result of pre-trial conferences has been granted on many occasions by the Trial Division of the High Court.

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**TURNER, Associate Justice**

At the pre-trial conference held this day at the Court-house, Uliga Island, Majuro Atoll, the plaintiff offered for the record his lease to the land in question, Utirikan *Wato*, Rita Island. The lease was dated December 17, 1967 and was recorded with the Clerk of Courts July 30, 1969. It was a renewal of a lease dated February 17, 1959 and was effective for fifty (50) years from February 17, 1967. The lease was signed by *Iroij erik* Tairik, Neika as *iroij erik* and *alab*, and Kotta as *dri jermal*.

The plaintiff commenced construction of a house in 1969 but business took him away from Majuro and when he returned, he discovered the house foundation he had constructed was used for a house being built by the defendant Whitaker for the defendant Neiar. Plaintiff complained to the police but was unable to get any action out of them. Defendants completed the house and Neiar began living in it. Plaintiff then filed this action for recovery of the premises, the removal of the house built by the defendants and for damages flowing from defendants' action.

The defendant Neiar, through her counsel, did not dispute the lease but asserted that it was a surprise to her because she had been authorized to build on the property by the *iroij erik*, Tairik, and by *Alab* Neika. The defendant Neiar and the *iroij erik* are brother and sister.

Defendants' counsel agreed that the permission given defendant did not affect the lease. This, it is obvious, is an example of another instance which occurs all too frequently in the Trust Territory of an owner or owners of land ignoring binding commitments regarding the land in favor of a second transaction. This Court said in *Akos v. Orem*, 3 T.T.R. 504 at 507:—

“The practice in Micronesia of sales, once made, being dishonored for a better price or for other reasons, which seemingly occurs much too frequently, should be regarded with disfavor by all who desire to live under a government of law.”

[1, 2] Defendants' only defense was that the rental payments of one hundred twenty dollars (\$120.00) per year were not divided into three parts and paid to the *iroij*, the *alab* and *dri jermal*. Defendants urged that no payment had ever been made to *Iroij erik* Tairik. As a matter of law, payment to one of three having control and “ownership” who leased the land rather than a divided payment to each of the three does not put plaintiff in default on the lease. There was no provision as to whom payment should be made to and plaintiff could not reasonably be expected to know the amount of each of the three shares. Plaintiff's payment to either the *alab* or *dri jermal* was reasonable and proper.

There being no defense as a matter of law to plaintiff's right to the land under the lease, the plaintiff is entitled to a partial summary judgment on that issue.

[3, 4] Plaintiff's entitlement to money damages for loss of use and injury to the house foundation he installed is a matter as to which there is a dispute as to fact. Sum-

mary judgment is available only when there is no dispute as to any substantial question of fact and one of the parties is entitled to a judgment as a matter of law. Summary judgment as a result of pre-trial conference has been granted on many occasions by this Court. *Jekron v. Saul*, 4 T.T.R. 128.

How much, if any, of plaintiff's loss or damage was as a result of defendants' action is a disputed question and is subject to proof or settlement. The parties informed the Court after recess of the pre-trial conference that an amicable agreement had been reached.

It is ordered, adjudged and decreed:—

1. That plaintiff is entitled to possession of Utirikan *Wato*, Rita Island, Majuro Atoll, in accordance with his lease.

2. In accordance with the agreement between the parties, the defendants and their families shall be allowed ninety (90) days from entry of judgment in which to vacate the premises.

3. Defendants agree to sell and plaintiff agrees to purchase the house on the premises built by the defendants for the sum of three hundred fifty dollars (\$350.00).

4. Plaintiff agrees to waive his claim for money damages against the defendants.

5. This judgment shall not affect rights-of-way over the land.

6. No costs are assessed.