

IN THE SUPREME COURT OF GUAM

**ARCHBISHOP OF GUAM,
ANTHONY SABLAN APURON,
OFM, CAP D.D.,
Appellee,**

vs.

**G.F.G. CORPORATION,
Appellant.**

Supreme Court Case No. CVA96-016
Superior Court Case No. CV1083-96

OPINION

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Appeal from the Superior Court of Guam
Submitted on 12 August 1997
Agana, Guam

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BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS, and JOSE LEON GUERRERO, Associate Justices.

WEEKS, J.:

This is an appeal from a judgment in an unlawful detainer action restoring possession of certain real property to Appellee Archbishop of Guam and awarding the Archbishop rental payments due for a period of one year. The tenant, Appellant G.F.G. Corporation, contends that the Archbishop's notice of default failed to comply with Guam's unlawful detainer statute, 21 GCA § 21103. We agree with Appellant and reverse the judgment of the Superior Court.

BACKGROUND

[1] Appellee Archbishop of Guam ("Archbishop") leased property to Appellant G.F.G. Corporation ("G.F.G.") for a period of 99 years. The rent was set at \$15,000 per month increasing 10% after the first five years and every five years thereafter. G.F.G.'s failure to pay rent led to a series of three unlawful detainer actions, the instant action being the most recent.

[2] The first unlawful detainer action ("*Unlawful Detainer I*") was filed on 7 September 1994 and was based on a notice of default that Appellee sent to G.F.G. on 16 February 1994 demanding performance under the lease or surrender of the property. Following a trial, the Superior Court entered judgment awarding possession of the property to the Archbishop as well as unpaid rent up to the date of judgment. The Appellate Division of the District Court of Guam reversed the judgment because the Archbishop did not have a business license and did not substantially comply with the business licensing statute. *Archbishop of Guam v. G.F.G. Corp.*, No. CR-95-00007A 1995 WL 604383, at *3 (D. Guam App. Div. Oct. 2, 1995). The opinion from the Appellate Division included the following statement in a footnote: "We do not reach whether post-October 1994 circumstances support further proceedings against G.F.G. and this decision is not intended to prejudice future pursuit of any appropriate claims." *Id.*

[3] The second unlawful detainer action ("*Unlawful Detainer II*") was filed on 8 April 1996 and was based on a notice of default sent to G.F.G. on 2 February 1996. The notice demanded rental payments covering a period of sixteen months, from October 1994 to January 1996, and also demanded interest and attorneys' fees. On the same day *Unlawful Detainer II* was filed, Appellee sent another notice of default to G.F.G. demanding, in addition to attorneys' fees and interest, rent again covering a period of sixteen months, this time from January 1995 to April 1996. This third default notice was entitled Alternate Written Notice of Default to Lessee and included the following language:

This notice is an "Alternate Notice" given on the contingency that the Superior Court of Guam may rule that the "Written Notice of Default to Lessee" given by the Lessor to the Lessee on January 31, 1996 is defective by reason of inclusion therein of rental accruing from October 6, 1994 through December 31, 1994. This alternative notice shall not be deemed as an admission that rental for the months of October, November and December, 1994 is res-judicata, nor shall it be deemed as a waiver of claim for the said rental.

[4] G.F.G. did not appear in court to defend the action in *Unlawful Detainer II*. The Superior Court issued a default judgment which led to a 6 May 1996 judgment restoring possession to the Archbishop and awarding rent from October 1994 to April 1996. G.F.G. appealed the judgment in *Unlawful Detainer II* to the Appellate Division which resulted in another reversal. *Archbishop of Guam v. G.F.G. Corp.*, No.

CIV 96-00048A 1997 WL 208978, at *1 (D. Guam App. Div. Apr. 21, 1997). The Appellate Division held that Appellee's notice of default was invalid because it demanded more than one year's rent and was therefore not in compliance with 21 GCA § 21103, Guam's unlawful detainer statute. *Id.*

[5] On 18 July 1996, prior to the Appellate Division's reversal in *Unlawful Detainer II*, Appellee filed a third unlawful detainer action ("*Unlawful Detainer III*") in the Superior Court. This third action, the subject of the instant appeal, was based on the 8 April 1996 Alternative Notice of Default described above. The complaint in *Unlawful Detainer III* included the following clause: "This action is brought on the contingency that defendant prevails in its appeal from the Judgment in Civil Case No. CV0464-96, Superior Court of Guam [*Unlawful Detainer II*], such appeal now pending in the District Court under D.C.C.V. 96-00048A."

[6] G.F.G. filed a summary judgment motion on 13 August 1996 challenging the 8 April 1996 Alternative Notice of Default primarily on the basis that the notice demanded rent for a period in excess of one year. The Superior Court denied the summary judgment motion and on 4 October 1996 filed findings of fact and conclusions of law awarding Appellee twelve months of rent as well as interest and attorneys' fees. A separate judgment to this effect was filed on 30 January 1997. This appeal followed.

DISCUSSION

[7] Appellant G.F.G. presents three arguments on appeal. First, G.F.G. argues that the Alternative Notice of Default which formed the basis of this unlawful detainer action was not in compliance with Guam's unlawful detainer statute because it demanded rent in excess of 12 months. Second, G.F.G. argues that the judgment in this case, *Unlawful Detainer III*, is barred by the doctrine of res judicata because the lower court judgment in *Unlawful Detainer II*, awarding possession and unpaid rent to Appellee, already existed. Third, G.F.G. argues that the cause of action in this case is barred by the doctrine of ripeness because the complaint was expressly made contingent upon reversal of *Unlawful Detainer II* by the Appellate Division, an event that had not yet taken place.

[8] Arguably, Appellant's two latter arguments are rendered moot by the 21 April 1997 Appellate Division opinion reversing the judgment in *Unlawful Detainer II*. We need not address either of these arguments, however, because we find that G.F.G.'s defective notice argument warrants reversal of the judgment below. This was precisely the same basis of the Appellate Division's reversal in *Unlawful Detainer II*.¹

[9] Whether the Alternative Notice of Default in this case was defective such that Appellee's complaint failed to state a claim is a question of law which we review *de novo*. *Franceschi v. Schwartz*, 57 F.3d 828, 830 (9th Cir. 1995).

[10] Guam's unlawful detainer statute, 21 GCA § 21103, was derived from California's former unlawful detainer statute, Cal. Civ. P. Code § 1161. Unlike a common law breach of contract action, the purpose of an unlawful detainer action is to recover possession. Proceedings in an unlawful detainer action are intended to be summary in nature and are required by law to be expedited. 21 GCA § 21120. Also, because an unlawful detainer action is a summary remedy, the unlawful detainer statute must be complied with strictly. *Cal-American Income Property Fund IV v. Ho*, 161 Cal. App. 3d 583, 585 (Cal. Ct. App. 1984).

¹ Due to an administrative error, footnote 1 to Supreme Court Case No. CVA96-016, filed on October 17, 1997 was incorrectly included.

[11] To maintain a valid unlawful detainer action under Guam law, the landlord must establish that the tenant has defaulted in the payment of rent, is in possession of the property without the landlord's permission, and that the tenant has been served with a valid notice demanding payment or surrender of possession. 21 GCA § 21103. To be valid, the default notice must be served at least five days prior to the filing of the action, must state the amount of rent which is due, and must be served within one year of the date that the rent became due. 21 GCA § 21103(b).

[12] California authority is clear as to the interpretation of the provision requiring the notice to state "the amount which is due." A default notice that overstates the amount due is insufficient to support an action for unlawful detainer. *Jayasinghe v. Lee*, 13 Cal. App. 4th Supp. 33, 37 (Cal. App. Dep't Super Ct. 1993). Because the notice must be served within one year of the date when the rent becomes due, it is invalid if the notice demands more than one year's rent. *Bevill v. Zoura*, 27 Cal. App. 4th 694, 697-698 (Cal. Ct. App. 1994).

[13] Nevertheless, the Archbishop asks this Court for a liberal interpretation of the "amount" requirement of § 21103(b), arguing that the purpose of the notice requirement is fairness to the tenant. According to the Archbishop, as long as the tenant has adequate information with which to determine the amount of rent due, a notice that overstates the amount is still valid. We find this argument unpersuasive. Under § 21103, it is the landlord's responsibility, not the tenant's, to give notice of the amount that must be paid in order for the tenant to avoid a court ordered surrender of property. We fail to see why a notice that demands rent for a period of sixteen months, rather than the maximum twelve months permitted by statute, should be deemed valid simply because the tenant was in a position to know the correct amount.

[14] The Archbishop cites *Valov v. Tank*, 168 Cal. App. 3d 867 (Cal. Ct. App. 1985) and *Budaef v. Huber*, 194 Cal. App. 2d 12 (Cal. Ct. App. 1961) to support the proposition that the validity of a default notice must be determined on a case by case basis. Neither case, however, addresses the specific issue in this appeal. More precisely, neither case involves a default notice that overstated the amount of rent due. In *Valov* the notice provided a formula by which the amount due was to be calculated. *Valov*, 168 Cal. App. 3d at 870. In that case, only the tenant possessed the information required to calculate the rent according to the formula in the lease. *Id.* In *Budaef*, an action for ejectment, there had been repeated demands for payment of the exact amount due prior to the final default notice. *Budaef*, 194 Cal. App. 2d at 15, 18.

[15] Quite the opposite exists under the facts of this case. While the Archbishop did serve a series of three notices to G.F.G., all three notices, including the notice at issue in this case, demanded rent in excess of the twelve month statutory limit.

[16] Unlike the courts in *Valov* and *Budaef*, we are not persuaded that considerations of fairness justify a relaxed application of the notice requirement. The Appellate Division correctly rejected this argument in *Unlawful Detainer II* and in this case, we likewise reach the same result.

CONCLUSION

[17] For the foregoing reasons, the judgment of the Superior Court is **REVERSED**.