

**IN THE SUPREME COURT**

**FOR THE STATE OF NORTH DAKOTA**

RAD Development-Main Street, )  
 )  
LLC, )  
 )  
Plaintiff and Appellee, )  
 )  
vs. )  
 )  
Elvis Y. Leunguen-Koundjo, )  
 )  
And All Other Occupants, )  
 )  
Defendant and Appellant. )

Supreme Court No.: 20170447  
District Court No.: 53-2017-CV-01161

---

**APPEAL FROM THE DISTRICT COURT OF WILLIAMS COUNTY**

**NORTHWEST JUDICIAL DISTRICT**

**THE HONORABLE JOSHUA B. RUSTAD**

---

**BRIEF OF THE PLAINTIFF-APPELLEE**

---

Jeff L. Nehring, ND ID #05410  
Hernando Perez, ND ID # 08260  
NEHRING LAW OFFICE, PLLC  
716 2<sup>ND</sup> ST W  
WILLISTON, ND 58801  
[info@nehrlaw.com](mailto:info@nehrlaw.com)  
701-577-5555  
Attorneys for Plaintiff-Appellee

¶i **TABLE OF CONTENTS**

Table of Contents.....¶ i

Table of Authorities.....¶ ii

Statement of the Issues.....¶ 1-3

Statement of the Case.....¶ 4

Statement of the Facts.....¶ 5-12

Argument.....¶ 13-22

Conclusion.....¶ 23

¶ii **TABLE OF AUTHORITIES**

**CASES**

Marsden v. Koop, 2010 ND 196, ¶8, 789 N.W. 2d 531 ..... ¶13  
Nelson v. Johnson, 2010 ND 23, 778 N.W.2d 773..... ¶13  
Rosendahl v. Rosendahl, 470 N.W. 2d 230, 231 (N.D. 1991) ..... ¶13  
Schmitt v. Schmitt, 2014 ND 225, ¶ 5, 857 N.W.2d 362 ..... ¶14

**STATUTES**

§ 47-32 ..... passim

**NORTH DAKOTA RULES OF CIVIL PROCEDURE**

Rule 52(a)(6)..... ¶13

### **STATEMENT OF THE ISSUES**

- [¶1] A. Whether the RAD Development-Main Street, LLC properly performed all prerequisites under North Dakota Century Code, Chapter 47-32 in order to bring eviction action against Mr. Leunguen-Koundjo.
- [¶2] B. Whether the district court correctly found that Mr. Leunguen-Koundjo was in default of the lease agreement.
- [¶3] C. Whether the district court correctly ordered Mr. Leunguen-Koundjo to be evicted from the premises and award RAD Development-Main Street, LLC a monetary judgment in the amount of \$1,444.52 for reasonable attorney's fees and costs.

### **STATEMENT OF THE CASE**

[¶4] RAD Development-Main Street, LLC (“RAD Development”) is the owner of the real estate located at 413 Main Street, Suite 201, Williston, North Dakota, and leased the property to Elvis Y. Leunguen-Koundjo on January 19, 2017. On October 6, 2017 RAD Development brought an eviction action against Mr. Leunguen-Koundjo for lease violations, which included causing damage to the property, failing to maintain order, making loud noises, and otherwise disturbing other residents. A hearing was held on October 18, 2017. Mr. Leunguen-Koundjo appeared in Court. The District Court, Williams County, Northwest Judicial District Honorable Judge Joshua B. Rustad, issued judgment of eviction and awarded RAD Development a monetary judgment of \$1,444.52 against Mr. Leunguen-Koundjo for reasonable attorney’s fees, and costs for bringing the eviction action. Mr. Leunguen-Koundjo appealed.

### **STATEMENT OF THE FACTS**

[¶5] RAD Development is the owner of a seventeen (17) unit apartment building located at 413 Main Street, Williston, North Dakota. Apartment 201 was leased to Elvis Y. Leunguen-Koundjo on January 19, 2017. (Transcript of Eviction Hearing at 15:24 and App. 8) The terms of the lease agreement required Mr. Leunguen-Koundjo to pay RAD Development rent in the amount of \$800.00, with payment due on the first day of each month. (App. 8 at ¶ 3) In addition, the lease agreement required Mr. Leunguen-Koundjo to put down a \$500.00 security deposit to cover any damages done to the apartment upon the tenant's move-out date. (App. 8 at ¶ 4) Also, pursuant to the terms of the lease agreement, if payment was not made by the 5th of each month, a \$50.00 late fee would be assessed. (App. 12 at ¶ 21)

[¶6] RAD Development initiated eviction proceedings against Mr. Leunguen-Koundjo for numerous violations of the lease terms. The apartment manager, Ms. Hickel, had received numerous complaints that Mr. Leunguen-Koundjo was disturbing the other residents by making loud banging noises. (Tr. 8:3-4) When Ms. Hickel contacted Mr. Leunguen-Koundjo to investigate the loud banging noises, she discovered that he had punched a large number of holes in the ceiling. (Tr. 8:5-7) Also during her inspection of the apartment, Ms. Hickel discovered that the smoke alarms were all taken down. (Tr. 11:10-16)

[¶7] Ms. Hickel had also received tenant complaints that Mr. Leunguen-Koundjo harassing and stalking other tenants. (Tr. 10:24-25 and 14:14-19) In total, Ms. Hickel had received complaints about Mr. Leunguen-Koundjo from ten of the seventeen tenants. (Tr. 15:21-25 and 16:1-4) At the end of the residency, Mr. Leunguen-Koundjo changed the door lock without permission.

[¶8] The terms of the lease agreement require the tenant to maintain the property in good order, repair, and in a safe, clean, and tenantable condition for the duration of the term of the lease. (App. 9 at ¶1,6) The lease terms also state that if a tenant damages or destroys the property beyond normal wear and tear, then tenant will be in default of the lease and will be subject to possible eviction. *Id.* In addition, the tenant shall at all times maintain order in the premises and at all places on the premises, and shall not make or permit any loud or improper noises, or otherwise disturb other residents. (App. 10 at ¶ 12(i)) The lease agreement indicates that the tenant shall be in default under the lease if tenant does not pay rent or other amounts owed under the lease on time, or violates any other conditions contained in the lease agreement. (App. 11 at ¶ 20) The terms of the lease agreement allow RAD Development to recover reasonable attorney's fees in the event of an eviction action. (App. 12 at ¶ 23)

[¶9] The District Court heard testimony that Mr. Leunguen-Koundjo has failed to comply with several lease agreement terms. This testimony included the fact that he made hundreds of holes in the ceiling, causing severe damage to the premises. (App. 18-21) Additionally, he removed smoke alarms, causing the premises to be in an unsafe condition. (App. 6 at ¶ 7(a)) Mr. Leunguen-Koundjo failed to comply with the lease agreement by failing to maintain order, making loud noises, and otherwise disturbing other residents. (App. 6 at ¶ 7(b)) Mr. Leunguen-Koundjo failed to comply with the terms of the lease agreement as he did not pay rent for October of 2017 by the first of the month, and thereafter did not pay rent by the fifth day of October. Pursuant to the terms of the lease agreement, non-payment of rent by the fifth day of the month results in a late fee of \$50.00. (App. 12 at ¶ 21)

[¶10] In addition to the damage Mr. Leunguen-Koundjo caused to the apartment ceiling, his removing of the smoke alarms, and his constant disturbances, Mr. Leunguen-Koundjo also failed to comply with the terms of his contract by changing the lock on the door. (Tr. at 19:14-

20:1) The terms of the lease agreement indicate that tenants are not to cause or permit any locks to be placed upon any door without the prior *written* consent of the Landlord. (App. 10 at ¶ 12(f))

[¶11] RAD Development hand-delivered to Mr. Leunguen-Koundjo a 3-day notice of intention to evict on September 18, 2017. (App. 15) Mr. Leunguen-Koundjo did not move out of the apartment. RAD Development brought an eviction action against Mr. Leunguen-Koundjo in the Williams County Courthouse by filing a complaint on October 6, 2017 with the Williams County clerk of court. (App. 5) At the time the Complaint was filed and served, Mr. Leunguen-Koundjo was past due in the amount of \$464.00 for pro-rated October rent and \$50.00 in late fees for the month of October. (Tr. 11:24-12:8, 12:23-13:10)

[¶12] RAD Development caused a copy of the Summons and Complaint, and Exhibits 1-3 to be served by personal service via process server to Mr. Leunguen-Koundjo as required by N.D.C.C. § 47-32-02. (App. 5-23) A hearing was held on October 18, 2017, at which the District Court received evidence and testimony. The District Court Judge, Joshua B. Rustad found Mr. Leunguen-Koundjo in default of the lease and ordered Mr. Leunguen-Koundjo to evict the premises and awarded a monetary judgment in favor of RAD Development against Mr. Leunguen-Koundjo for reasonable attorney's fees and costs. (App. 27)



## ARGUMENT

### **1. Standard of Review**

[¶13] This Court has held that on appeal the party challenging the findings of fact of a trial court has the burden of demonstrating that those findings are clearly erroneous. Rosendahl v. Rosendahl, 470 N.W.2d 230, 231 (N.D. 1991) see N.D.R.Civ.P. 52(a)(6). A finding of fact is clearly erroneous only if it is induced by an erroneous view of the law or, although there is some evidence to support it, on the entire record we are left with a definite and firm conviction a mistake has been made. Marsden v. Koop, 2010 ND 196, ¶8, 789 N.W. 2d 531. This court has stated that “A district court’s choice between two permissible views of the weight of the evidence is not clearly erroneous, and simply because we may have viewed the evidence differently does not entitle us to reverse the district court. On appeal, we do not reweigh conflicts in the evidence, and we give due regard to the district court’s opportunity to judge the credibility of the witnesses.” Nelson v. Johnson, 2010 ND 23, ¶ 31, 778 N.W.2d 773.

### **2. RAD Development properly performed all prerequisites under North Dakota Century Code, Chapter 47-32 in order to bring eviction action against Mr. Leunguen-Koundjo.**

[¶14] An eviction to recover possession of land may be maintained when the lessee violates a material term of the written lease agreement between the lessor and lessee.

N.C.C.C. § 47-32-01(8) As this court has explained:

Section 47–32–02, N.D.C.C., provides for an expedited procedure, with the defendant allowed between three and fifteen days to appear and defend in the action. If the court finds for the plaintiff, the court must enter judgment granting immediate restitution of the premises to the plaintiff, but the court may delay execution in case of hardship for a reasonable period not exceeding five days. N.D.C.C. § 47–32–04. The statute strictly limits the parties' ability to combine the eviction with other claims and precludes the defendant from interposing a

counterclaim, except as a setoff to the plaintiff's claim for damages, rent, or profits. N.D.C.C. § 47-32-04. The proceeding is limited to a speedy determination of the right to possession of the property, without bringing in extraneous matters. The purpose of the statute is to provide an inexpensive, expeditious, and simple means to determine possession. Schmitt v. Schmitt, 2014 ND 225, ¶ 5, 857 N.W.2d 362.

[¶15] RAD Development under N.D.C.C. § 47-32-04 is required to give notice to Mr. Leunguen-Koundjo of an intent to evict him from the property. RAD Development provided appropriate notice to Mr. Leunguen-Koundjo. (App. 15) Mr. Leunguen-Koundjo did not comply and continued to be in possession of the premises. RAD Development also served Mr. Leunguen-Koundjo with a copy of the Summons and Complaint as well as exhibits. (App. 5-23) The District Court had jurisdiction over the matter and parties because the property is in Williston, ND and Mr. Leunguen-Koundjo resides in Williston, ND. (App. 5)

**3. The district court correctly found that Mr. Leunguen-Koundjo was in default of the lease agreement.**

[¶16] The trial court heard testimony from the apartment manager, Jenna Hickel, regarding the tenancy of Mr. Leunguen-Koundjo. Ms. Hickel testified that the lease terms contained provisions concerning damage to the property, smoke alarms, locks and the conduct of the tenants. (Tr. 6:15) Ms. Hickel also testified that Mr. Leunguen-Koundjo paid his rent late, but the court did not find that this was a breach of the lease. (Transcript 32:1-3)

[¶17] Based upon the testimony of Ms. Hickel and the pictures of the ceiling submitted into evidence, the Court found that Mr. Leunguen-Koundjo had damaged the property beyond normal wear and tear. (Tr. 32:3-4) This violated the lease provision 13. (App. 10) There was sufficient evidence submitted for the Court to make this factual finding.

[¶18] Next, the Court heard testimony from Ms. Hickel that Mr. Leunguen-Koundjo had removed the smoke detectors. (Tr. 32:7-10) In addition, Mr. Leunguen-Koundjo admitted that he had removed the smoke detectors. (Tr. 27:3) Paragraph 8 of the lease prohibits the lessee

from making alterations to the apartment without the landlord's written consent. (App. 9) The Court had sufficient evidence to find that a breach of the lease occurred for the smoke detectors' removal.

[¶19] The Court also found that Mr. Leunguen-Koundjo violated the lease term contained in paragraph 12 subsection i (Tr. 32:11-15) This term prohibits tenants from making any loud or improper noises or otherwise disturbing the other residents. (App. 10) This finding was supported by Ms. Hickel's testimony that she had received numerous complaints for banging. (Tr. 32:11-15 and 8:3-4) When she investigated, Ms. Hickel was able to see holes punched in the ceiling, which corroborated the banging complaints. (Tr. 8:4-7, 32:20-21) Therefore, sufficient evidence was submitted to the Court to base its decision upon.

[¶20] Next, Ms. Hickel provided testimony that the removal of the smoke detectors was a violation of the lease terms. (Tr. 11:15-19) The lease was introduced into evidence and contained a provision that tenants are not allowed to make alterations to the apartment without written consent of the landlord. (App. 9 at ¶8) Mr. Leunguen-Koundjo corroborated Ms. Hickel's testimony by admitting he removed the smoke detectors. (Tr. 27:3-11) Also, Mr. Leunguen-Koundjo did not present evidence that he had received written permission to do so. (Tr. 27:3-11) Therefore, the Court properly found that Mr. Leunguen-Koundjo had violated this lease term. (Tr. 30:22-25)

[¶21] Finally, the Court heard testimony from both Ms. Hickel and Mr. Leunguen-Koundjo that the locks were changed without permission. (Tr. 19:15-25, 29:25, 30:1-3) The lease contains the provision that prior written permission is needed to change the locks. (App. 10(f)) Thus, the Court had sufficient evidence to find that a violation of the lease occurred. (Tr. 32:17-21)

**4. The district court correctly ordered Mr. Leunguen-Koundjo to be evicted from the premises and award RAD Development a monetary judgment in the amount of \$1,444.52 for reasonable attorney's fees and costs.**

[¶22] The District Court found Mr. Leunguen-Koundjo was in default of the lease agreement for violating the numerous terms of the lease agreement. Under N.D.C.C. 47-32-04 if the District Court finds for the plaintiff in the action, the court shall enter judgment that the plaintiff have immediate restitution of the premises. Upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship on the defendant or the defendant's family, except in cases in which the eviction judgment is based in whole or in part on a disturbance of the peace, the court may stay the special execution for a reasonable period, not to exceed five days. The lease agreement that Mr. Leunguen-Koundjo signed allows RAD Development to recover all reasonable attorney's fees litigation cost and other costs and expenses incurred by RAD Development in enforcing any of RAD Development's rights or remedies under the lease. (App. 12 at ¶ 23). The district court correctly ordered Mr. Leunguen-Koundjo to be evicted from the premises and award RAD Development a monetary judgment in the amount of \$1,444.52 for reasonable attorney's fees and costs.

#### **CONCLUSION**

[¶23] Based on the foregoing, RAD Development respectfully requests this Court affirm the decision of the District Court, as RAD Development properly performed all prerequisites under North Dakota Century Code, Chapter 47-32, the district court properly found Mr. Leunguen-Koundjo in default of the lease agreement, and the district court properly ordered Mr. Leunguen-Koundjo to evict the premises and awarded RAD Development a monetary judgment in the amount of \$1,444.52 for reasonable attorney's fees and costs.

DATED this 18<sup>th</sup> day of May, 2018.

NEHRING LAW OFFICE, PLLC  
ATTORNEYS FOR PLAINTIFF-APPELLEE  
716 2<sup>ND</sup> ST W  
WILLISTON, ND 58801

/s/ Jeff L. Nehring  
Jeff L. Nehring, ND ID #05410  
Hernando Perez, ND ID # 08260  
info@nehrlaw.com  
mailto:info@nehrlaw.com  
701-577-5555

**IN THE SUPREME COURT**

**FOR THE STATE OF NORTH DAKOTA**

RAD Development-Main-Street,	)	
LLC,	)	
Plaintiff and Appellee,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	Supreme Court No.: 20170447
	)	District Court No.: 53-2017-CV-01161
Elvis Y. Leunguen-Koundjo,	)	
And All Other Occupants,	)	
	)	
Defendant and Appellant.	)	

---

[¶1] I hereby certify I made service of the foregoing Brief of the Plaintiff-Appellee and Certificate of Service upon Elvis Y. Leunguen-Koundjo, by emailing a true and correct copy of the same to 'eylk2012@gmail.com', on this 18<sup>th</sup> day of May, 2018.

NEHRING LAW OFFICE, PLLC  
ATTORNEY FOR DEFENDANT  
716 2<sup>ND</sup> ST W  
WILLISTON, ND 58801

/s/ Jeff L. Nehring  
Jeff L. Nehring, ND ID #05410  
Hernando I. Perez, ND ID #08260  
info@nehrlaw.com  
701-577-5555