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**FOR PUBLICATION**

**IN THE SUPERIOR COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**JOSE CH. CAMACHO,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
 **CNMI DEPARTMENT OF PUBLIC** )  
 **WORKS and the MARIANAS PUBLIC** )  
 **LANDS AUTHORITY,** )  
 )  
 **Defendants.** )  
 \_\_\_\_\_ )

**Civil Action No. 04-0220E**

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF’S  
MOTION FOR SUMMARY JUDGMENT  
AND DENYING MPLA’S CROSS-  
MOTION FOR SUMMARY JUDGMENT**

**THIS MATTER** came on for hearing June 30, 2005, at 1:30 p.m. in courtroom 223A on Plaintiff, Jose Ch. Camacho’s (“Plaintiff”) Motion for Summary Judgment and Defendant Marianas Public Lands Authority’s (“MPLA”) Cross-Motion for Summary Judgment. Robert Tenorio Torres appeared for Plaintiff, Ramon Quichocho appeared for MPLA, and Alan Barak appeared on behalf of the CNMI Department of Public Works (“DPW”).

**I. BACKGROUND**

This matter originally came before the Court pursuant to Plaintiff’s May 17, 2004, Complaint, alleging a taking without compensation, breach of contract of good faith and fair dealing, promissory estoppel, and unjust enrichment. In response to the Complaint, MPLA filed a Motion

1 to Dismiss and Motion for Sanctions, asserting that MPLA is not a proper party to the suit and that  
2 Plaintiff did not properly exhaust his administrative remedies. The Court denied MPLA's motions  
3 on January 13, 2005, holding that MPLA is the proper party to the suit because its predecessor,  
4 MPLC entered into an agreement with Plaintiff to compensate Plaintiff for his land, and, given the  
5 circumstances of the case, the exhaustion rule did not apply.<sup>1</sup>  
6

7 Following the January 13, 2005, ruling, Plaintiff filed the present Motion for Partial  
8 Summary Judgment, which was met with a Cross-Motion for Summary Judgment. Plaintiff's  
9 Motion for Partial Summary Judgment seeks a summary judgment ruling on the taking of Plaintiff's  
10 land for a public purpose and asserts that:  
11

- 12 1) Because Plaintiff's land was taken for a public purpose, he is entitled to "just  
13 compensation" in the amount offered Plaintiff in 1991 and 1992;
- 14 2) "Just compensation" requires something more than the fair market value at the time of the  
15 taking due to the long delay in compensating Plaintiff for land taken in the early 1990's; and,  
16 3) Plaintiff is entitled to breach of contract damages pursuant to the failure to pay Plaintiff  
17 in accordance with a 1992 compensation agreement.  
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20 MPLA's Cross-Motion for Summary Judgment raised the very same issues the Court  
21 dismissed on January 13, 2005, namely, that MPLA is an improper party to the suit and that  
22 "Plaintiff's choice is clear - exhaust AVAILABLE administrative remedies at MPLA." See,  
23 *MPLA's Memorandum in Opposition to Plaintiff's Motion for (Partial) Summary Judgment and*  
24 *Cross-Motion for Summary Judgment in MPLA's Favor*, filed June 7, 2005; and *Reply to Opposition*  
25 *to Cross-Motion for Summary Judgment in MPLA's Favor, MPLA's Opposition to Plaintiff's*  
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28 <sup>1</sup> For a detailed discussion, see *Order Denying MPLA's Motion to Dismiss and Motion for Sanctions*,  
January 13, 2005.

1 *Motion for Sanctions Pursuant to Rule 56(g)*, filed June 29, 2005. MPLA’s Cross-Motion was  
2 accompanied by a Declaration from Ramon Salas (“Salas Declaration”) stating that Plaintiff was  
3 never offered compensation of \$150 per square meter. Plaintiff then moved for sanctions against  
4 MPLA for having submitted the “irrelevant” Salas Declaration in an attempt to “fabricate a dispute  
5 concerning the value of [Plaintiff’s] property.” See *Plaintiff’s Reply to MPLA’s Opposition to*  
6 *Plaintiff’s Motion for Summary Judgment, Opposition to MPLA’s Cross-Motion For Summary*  
7 *Judgment, and Motion for Sanctions Pursuant to Rule 56(g)*, filed June 16, 2005.

## 9 **II. DISCUSSION**

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11 A court may grant summary judgment when there are no genuine issues as to any material  
12 fact and the moving party is entitled to judgment as a matter of law. Com. R. Civ. P. 56(c); *Santos*  
13 *v. Santos*, 4 N.M.I. 206, 209 (1994). The moving party bears the initial burden to show the court  
14 that there is an absence of a genuine issue concerning any material fact and that the non-moving  
15 party cannot prevail. *Id.* at 210. In order to survive the motion, the non-moving party must then  
16 show that there is evidence from which a jury might return a verdict in his favor. *Cabrera v. Heirs*  
17 *of De Castro*, 1 N.M.I. 172, 176 (1990). Conclusory allegations are not sufficient to defeat a motion  
18 for summary judgment. *Id.* at 176-77. The court must accept all of the non-moving party's evidence  
19 as true and will view all inferences drawn from the underlying facts in the light most favorable to  
20 the non-moving party. *Id.* at 176. However, as noted above, MPLA’s response to Plaintiff’s motion  
21 was to renew the issues already ruled upon by this Court in January 2005. As such, the Court need  
22 only determine whether there is an absence of genuine issue of material fact.  
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25 Turning first to “just compensation” for Plaintiff’s land which is now being used for a public  
26 purpose, and has been since the early 1990’s: the United States Constitution provides that where  
27 the government requires a land owner to suffer a permanent physical invasion of his property,  
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1 however minor, the government must provide just compensation. U.S. CONST. amend. 5. Normally,  
2 the proper measure of just compensation for the government's permanent taking of private property  
3 is “the fair market value of [the] property at the time of the taking.” *See, e.g., Almeta Farmers*  
4 *Elevator & Warehouse Co. v. United States*, 409 U.S. 470, 473-74, 93 S. Ct. 791, 795, 36 L. Ed.  
5 2d 1 (1973). In the present matter, the government determined in 1992 that just compensation for  
6 the three lots comprising the 737 square meters of Plaintiff’s land was \$90.00 per square meter for  
7 a fee simple interest and an additional \$299,000 severance damage. Plaintiff has never disputed that  
8 valuation and, in fact, assented to the valuation in writing on at least two occasions. MPLA does  
9 not provide any convincing argument that the 1992 valuation was in error nor does it present any  
10 reason, much less a compelling reason, why a valuation other than the 1992 valuation is appropriate.  
11 As such, the Court determines that the \$90.00 per square meter for a fee simple interest and an  
12 additional \$299,000 severance damage amount offered to and accepted by Plaintiff is the proper  
13 measure of the value of the three lots comprising the 737 square meters of Plaintiff’s land taken for  
14 public use.  
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18 Turning next to whether “just compensation” includes interest and breach of contract  
19 damages in light of the years that have passed since the taking of Plaintiff’s land: the United States  
20 Supreme Court has held that “the Fifth Amendment does not forbid government to take land and pay  
21 for it later.” *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 7, 104 S. Ct. 2187, 2194, 81 L.  
22 Ed. 2d 1 (1984). In so ruling, the *Kirby* court did not place any limits on the amount of time in  
23 which the government could delay remitting payment before being in breach of contract. However,  
24 while *Kirby* did not place limits on the time for compensation, it did recognize that if disbursement  
25 is delayed, “the owner is entitled to interest thereon sufficient to ensure that he is placed in as good  
26 a position pecuniarily as he would have occupied if the payment had coincided with the  
27 appropriation.” *Id.*, 467 U.S. at 10-11, 104 S. Ct. at 2194 (*citing Phelps v. United States*, 274 U.S.  
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1 341, 344, 47 S. Ct. 611, 612, 71 L. Ed. 1083 (1927); *Seaboard Air Line R. Co. v. United States*, 261  
2 U.S. 299, 306, 43 S. Ct. 354, 356, 67 L. Ed. 664 (1923)).

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4 Applying *Kirby* to the present matter, because the government may employ a “take land now  
5 and pay later” approach, Plaintiff is not entitled to breach of contract damages. However, he is  
6 entitled to interest in an amount that will place him in as good a position as if he had been  
7 compensated at the time of the taking. Making a value judgment as to the amount of compensation  
8 that is just, fair, equitable, or reasonable in respect to interest due Plaintiff is a fact determination,  
9 which means, issues of material fact remain regarding what constitutes “just compensation.” *See*  
10 *Newport News Shipbuilding & Dry Dock Co. v. United States*, 374 F.2d 516 (Cl. Ct. 1967); *Seminole*  
11 *Indians of Fla. v. United States*, 455 F.2d 539, 543 (Cl. Ct. 1972).

13 Turning to Plaintiff’s Motion for Sanctions: Plaintiff argues that sanctions are appropriate  
14 on the grounds that MPLA filed the Salas Declaration in bad faith and solely for the purpose of  
15 delay. However, while the Court disagrees with MPLA and the importance MPLA assigns the Salas  
16 Declaration, a losing argument does not justify sanctions. Furthermore, a court must exercise  
17 caution in invoking its inherent power to regulate practice before it, and the court’s power to  
18 sanction conduct should be employed only when the conduct is egregious and clearly done in bad  
19 faith. The court makes no such finding in the submission of the Salas Declaration.  
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### 22 **III. CONCLUSION**

23 For the foregoing reasons, Plaintiff’s Motion for Summary Judgment setting the fair market  
24 value of the three lots comprising 737 square meters of Plaintiff’s land at \$90.00 per square meter  
25 for a fee simple interest and an additional \$299,000 severance damages is GRANTED and MPLA  
26 is hereby ordered to remit payment to Plaintiff;  
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1 Plaintiff's Motion for Summary Judgment regarding Breach of Contract damages is hereby  
2 denied and dismissed; and

3 Plaintiff's Motion for Summary Judgment regarding "just compensation" is granted in part  
4 and denied in part. Plaintiff is entitled to interest on monies owed him by MPLA, however, the  
5 amount due is a question of fact to be determined at trial.  
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7 Plaintiff's Motion for Sanctions is DENIED.

8 Defendant MPLA's Cross-Motion for Summary Judgment is DENIED.  
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10 A Status Conference is to be held on August 18, 2005 at 1:30 p.m. in Courtroom 223A.  
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12  
13 So ORDERED this 5th day of August 2005.

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15 /s/  
David A. Wiseman, Associate Judge  
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