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By Order of the Court, Presiding Judge ROBERTO C. NARAJA

FOR PUBLICATION



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

**COMMONWEALTH OF THE)
NORTHERN MARIANA ISLANDS,)**

CIVIL CASE NO. 97-0266

Plaintiff,)

v.)

**ORDER ESTABLISHING
POST-JUDGMENT INTEREST RATE**

**LOT NO. 353 NEW-G, LOT NO. 2016-1)
R/W, LOT NO. 353 N-G, RAMON A.)
TEBUTEB & ALL HEIRS OF MARIA)
MANGABAO, CLAIMING BY AND)
THROUGH RAMON A. TEBUTEB,)**

Defendants.)

**NICANOR F. NORITA, JOAQUIN P.)
ALDAN, JOSE P. ALDAN, JUAN F.)
FITIAL, FELICITA R. LIMES, JUAN RA)
LIMES, JUAN RO LIMES, LILLIAN R.)
LIMES, MARIA A. MENDIOLA, CONNIE)
A. ALDAN, ISAAC F. KAIPAT, &)
GREGORIO A. DELEON GUERRERO,)**

Intervenors.)

I. INTRODUCTION

THIS MATTER came before the Court on January 22, 2014 at 9:00 a.m. in Courtroom 202A for a Status Conference. The Commonwealth of the Northern Mariana Islands

1 (“Commonwealth”) was represented by Assistant Attorneys General Peter B. Prestley and Gilbert J.
2 Birnbrich. The Intervenors, Nicanor F. Norita, Joaquin P. Aldan, Jose P. Aldan, Juan F. Fitial,
3 Felicita R. Limes, Juan Ra Limes, Juan Ro Limes, Lillian R. Limes, Maria A. Mendiola, Connie A.
4 Aldan, Isaac F. Kaipat, and Gregorio A. Deleon Guerrero (collectively “Intervenors”) were
5 represented by Michael W. Dotts, Esq.

6 **II. BACKGROUND**

7 On March 30, 1993, the Commonwealth took, without compensation, land from the heirs of
8 Maria Mangabao for use as a public highway. On March 7, 1997, the Commonwealth filed a
9 complaint for eminent domain. On January 4, 2008, the Commonwealth consented to the principal
10 judgment of \$4,196,524.00 as the fair value of the land taken. *See* Partial and Immediate Final
11 Consent Opinion, Order and Judgment for Principal, January 22, 2008. On October 1, 2009, this
12 Court issued an order awarding the heirs \$7,235,138.10 or 6.991% as the constitutionally mandated
13 pre-judgment interest owed by the Government. This figure calculated the interest owed from the
14 date of taking, March 31, 1993, to the date of judgment, January 4, 2008. Order Granting
15 prejudgment interest rate, October 1, 2009.

16 The issue of post-judgment interest originally came before the Court through the
17 Intervenors’ Motion for Post Judgment Interest against the CNMI, filed December 31, 2012, in
18 which the Intervenors requested that the Court set post-judgment interest against the
19 Commonwealth at the statutory rate of 9% per annum. The Commonwealth filed its Opposition on
20 January 1, 2013, and the Intervenors filed their Reply on January 18, 2013. The motion was heard
21 on February 6, 2013. However, at that hearing and in their reply, the Intervenors seemed to change
22 their position from a request for 9% post-judgment interest to a request that the Court apply the pre-
23 judgment interest rate of 6.991% as the rate of post-judgment interest. *See* Nicanor Norita and His
24 Group’s Reply; *see also* Order Granting prejudgment interest rate, October 1, 2009 at 8. The

1 Commonwealth, on the other hand, stated that the Court should hold an evidentiary hearing to
2 determine the appropriate rate of post-judgment interest.

3 The parties attempted to negotiate a post-judgment interest rate to no avail. Both the
4 Commonwealth and the Intervenors retained experts, and the Court heard the experts' testimony on
5 July 10 and 11, 2013. The parties made closing statements on July 12, 2013. The Court requested
6 that the parties stipulate to a due date and provide proposed Findings of Fact and Conclusions of
7 Law. The Intervenors and the Commonwealth filed their briefs on November 1 and 5, 2013
8 respectively.

9 In the meantime, the Intervenors also filed a Motion for Writ of Execution on March 5,
10 2013. On March 18, 2013, the Commonwealth filed its Opposition, along with a Request for Stay.
11 Various hearings took place related to the issues of post-judgment interest and the writ of execution.
12 On October 4, 2013, the Court granted a stay on the Motion for Writ of Execution pending the
13 Supreme Court's decision in *Commonwealth of the Northern Mariana Islands v. Lot No. 2155W,*
14 *Lot 2186R/W, and Luisa B. Quitugua.* Order Granting Stay and Vacating the October 16, 2013
15 Motion Hearing, October 4, 2013. The Court also scheduled a status conference for January 22,
16 2014. *Id.*

17 The parties appeared for the January 22, 2014 status conference and informed the Court that
18 no decision had been rendered in the *Quitugua* case. However, both parties agreed that this Court
19 could decide the issue of post-judgment interest. As such, the Court now issues this written Order
20 setting post-judgment interest at a rate of 4.136% per annum.

21 **III. LEGAL STANDARD**

22 Just compensation is required when private property is taken for public purposes. NMI
23 Const. art. XIII, §§ 1-2; US Const. amend. V; *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 13;
24 *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 9 (1984). Just compensation is defined as

1 “the fair market value of the property on the date it is appropriated.” *Estate of Muna*, 2007 MP 16
2 ¶ 13, citing *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511-13 (1979). While interest is
3 generally unrecoverable against the government in the absence of an agreement to pay or a statute
4 providing for payment, the United States Supreme Court has created an exception for eminent
5 domain cases. *Commonwealth v. Lot 353 New G*, 2012 MP 6 ¶ 40, citing *Seaboard Air Line Ry. Co.*
6 *v. United States*, 261 U.S. 199, 304, 306 (1923). In the case of an eminent domain action, just
7 compensation requires that the property owner receive “interest sufficient to ensure that he is placed
8 in ‘as good a position pecuniarily as he would have occupied if the payment had coincided with the
9 appropriation.” *Id.*, quoting *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 10 (1984). Thus,
10 when the government delays payment of just compensation, it must pay “post-judgment interest
11 sufficient to put the property owner in as good a position as the owner enjoyed before the taking.”
12 *Id.*, citing *Phelps v. United States*, 274 U.S. 341, 344 (1927); *Seaboard*, 261 U.S. at 306.

13 The rate of interest is determined by what “‘a reasonably prudent person investing funds so
14 as to produce a reasonable return while maintaining safety of principal’ would have received.”
15 *Estate of Muna*, 2007 MP 16 ¶ 19, citing *United States v. 50.50 Acres of Land*, 931 F.2d 1349, 1354
16 (9th Cir. 1991). Additionally, a fair award “should bear some relation to the current value of the
17 property.” *Id.*

18 **IV. DISCUSSION**

19 **A. The Intervenor’s Suggested Rates of Interest**

20 The Intervenor’s have proposed three different interest rates to the Court. First, they claim
21 that the Court should use the statutory rate of 9%. Intervenor’s [Proposed] Findings of Fact and
22 Conclusions of Law Re: Post-Judgment Interest at 12-14; *see also* 7 CMC § 4101. However, our
23 Supreme Court has already ruled that applying a blanket statutory rate of interest is inappropriate
24 for eminent domain cases. *Estate of Muna*, 2007 MP 16 ¶¶ 14-15. Neither our Supreme nor

1 Superior courts are bound by the statute. *Id* at ¶ 14. Instead, the owner is entitled to an amount of
2 interest that would result in just compensation. *Id.* at ¶ 14-15; *Lot 353 New G*, 2012 MP 6 ¶ 40.
3 Therefore, this Court will not look to the statutory rate of post-judgment interest in its
4 determination.

5 Next, the Intervenors suggested that this Court use the pre-judgment interest rate of 6.991%.
6 Nicanor Norita and His Group’s Reply at 2. However, our Supreme Court specifically directed this
7 Court to make a determination of post-judgment interest, which is interest that accrues after a
8 judgment has been issued. *Lot 353 New G*, 2012 MP 6 ¶ 43. The Supreme Court further made clear
9 that this determination was to be made by establishing a rate of interest sufficiently designed to put
10 the Intervenors “in as good a pecuniary position as they would have enjoyed if the payment of just
11 compensation had coincided with the taking.” *Id.* To simply award the previously determined rate
12 of pre-judgment interest without considering the current market conditions would not achieve that
13 goal and would run counter to the Supreme Court’s directive. Therefore, the Court will not apply
14 this proposed rate.

15 Finally, the Intervenors presented certified public accountant Bruce McMillan (“McMillan”)
16 as an expert witness, who testified that post-judgment interest should be set at 7.74% compound
17 interest. In making this determination, McMillan applied the prudent investor rule and analyzed the
18 rates of return for various types of investments over a twenty-year period, ending in June 2013. His
19 analysis incorporated the pre-judgment interest term of March, 1993 through January, 2008.
20 However, interestingly enough, even when including the 2008 market crash, McMillan’s proposed
21 rate of interest is higher than the rate of pre-judgment interest established by this Court. McMillan’s
22 assessment invested 100% of the assets with 50% going into stocks and 50% going into bonds. He
23 did not allow for any cash or cash equivalents.

1 The Intervenors contend that it is essential to use an extended period of time in this analysis
2 to more accurately predict future market conditions. They further contend that using only the last
3 five years¹ of market analysis would be appropriate only if the Judgment was paid on the date of the
4 hearing. Intervenors’ [Proposed] Findings of Fact and Conclusions of Law Re: Post-Judgment
5 Interest at 8, n. 2.

6 **B. The Government’s Suggested Rate of Interest**

7 The Government presented certified public accountant David Burger (“Burger”) as an expert
8 witness, who testified that post-judgment interest should be set at 4.136%. This figure was based
9 upon an analysis of market performance from January 4, 2008 through March 31, 2013 to
10 determine what rate of return a reasonably prudent person using a moderately conservative
11 approach to investment could expect to achieve. Burger stated that limiting his research to include
12 only the post-judgment period was essential to establishing an accurate post-judgment interest rate
13 because the return on investments fluctuates widely between years. Thus, in his opinion, looking
14 back twenty years would not be relevant to establishing a suitable post-judgment interest rate.
15 Burger’s assessment invested 90% of the assets with 40% going into stocks, 50% going into bonds,
16 and 10% remaining as cash or cash equivalents.

17 The Intervenors have addressed, at length, the issue of Burger’s use of a “moderately
18 conservative” profile. However, the Court notes here that while the Intervenors’ expert stated that
19 he applied the prudent investor rule in determining his proposed rate of interest, he settled on the
20 exact rate of interest as set forth by BM’s moderately conservative portfolio. *See* Manager vs
21 Benchmark: Return through 2013 chart in Intervenors’ [Proposed] Findings of Fact and
22 Conclusions of Law Re: Post-Judgment Interest at 6. Therefore, it appears that the Intervenors’

23
24 ¹ The five year period begins at that date of Judgment and extends to roughly the date of the evidentiary hearing, in
which the Intervenors’ and Government’s expert witnesses gave testimony.

1 expert may agree that using a moderately conservative portfolio is reasonable within the prudent
2 investor rule.

3 **C. The Rate of Post-Judgment Interest is 4.136%**

4 The Court has before it two possible rates of interest from which to choose, both of which
5 present problems. One, as proposed by the Intervenors, uses an extended period of time and
6 includes the years in which the economy was at its height. These high-yielding years were
7 previously taken into consideration when this Court calculated the rate of pre-judgment interest. To
8 use these years a second time to off-set the economic decline that occurred in 2008 would lead to
9 the Intervenors receiving the benefit of those high-earning years twice. The second rate, as
10 suggested by the Government, uses a calculation from a significantly shortened period of time that
11 may be more conservative than what the typical prudent investor could have obtained.

12 While both proposed rates of post-judgment interest have potential problems, the Court
13 finds that the Government's analysis is the only equitable choice. This case was remanded from the
14 Supreme Court for a determination of *post*-judgment interest since pre-judgment interest was
15 already awarded. *Lot 353 New G*, 2012 MP 6 ¶ 43. Post-judgment interest is interest that accrues
16 after the entry of a judgment. Therefore, it is inappropriate for this Court to consider market
17 research for a period of time before the Judgment was issued.

18 The Intervenors have argued against the moderately conservative approach to investment
19 employed by the Government. However, the Intervenors' own expert witness settled on a rate of
20 interest that exactly matches this standard. The Court believes it is reasonable for a prudent investor
21 to take a moderately conservative approach to investment. Finally, the Supreme Court has stated
22 that the trial courts should consider the current value of the property. *Estate of Muna*, 2007 MP 16 ¶
23 19. While neither party presented this information, the Court notes that property in the
24 Commonwealth has declined in value from the original date of taking of March 31, 1993. It does

1 not believe that the property in question would yield a value of \$4,196,524 had it been sold in
2 today's market. The Court, therefore, finds that the most equitable rate of post-judgment interest
3 presented in this case is the one set forth by the Government.

4 Accordingly, post-judgment interest is set at a rate of 4.136% per annum. The Court finds
5 that this rate of interest sufficiently protects the prior Judgment awarded to the Intervenors and
6 places them in as good a position as they would have been in had the Government's payment
7 coincided with the taking of their land.

8 **V. CONCLUSION**

9 Post-judgment interest is set at a rate of 4.136% simple interest.

10 **SO ORDERED** this 10th day of March, 2014.

11
12 /s/
13 **ROBERTO C. NARAJA**, Presiding Judge