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By order of the Court, Pro Tem Judge Alberto C. Lamorena, III

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

COMMONWEALTH OF THE)
NORTHERN MARIANA ISLANDS,)

Plaintiff,)

v.)

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, and)
GREGORIO A. DELEON GUERRERO,)

Intervenors.)

CIVIL ACTION NO. 97-0266

ORDER GRANTING INTERVENORS'
REQUEST TO ORDER THE
COMMONWEALTH TO MAKE
PAYMENT ON THE JUDGMENT
AGAINST IT

I. INTRODUCTION

THIS MATTER came before the Court on June 23, 2017 at 10:00 a.m. in Courtroom 223A for a status conference and motion hearing. Assistant Attorney General Charles E. Brasington represented Plaintiff Commonwealth of the Northern Mariana Islands ("Commonwealth"). Attorney Benjamin K. Petersburg represented Defendant Ramon A. Tebuteb, in his capacity as Administrator of the Estate of Maria Mangabao ("Estate"). Attorney Michael W. Dotts represented Intervenors Nicanor F. Norita, Joaquin P. Aldan, Jose P. Aldan, Juan F. Fitial, Felicita R. Limes, Juan Ra

1 Limes, Juan Ro Limes, Lillian R. Limes, Maria A. Mendiola, Connie A. Aldan, Isaac F. Kaipat, and
2 Gregorio A. Deleon Guerrero (“Intervenors”).

3 At the hearing, the Court handled a number of threshold matters. The Court also heard
4 arguments from the parties on Intervenors two motions, both requesting that the Court order the
5 Commonwealth, specifically the Secretary of Finance and Treasurer, to make payment to the heirs
6 of the Estate. Intervenors’ first motion was filed on December 20, 2016 wherein Intervenors argued
7 that since there was an appropriation to pay land claims, Public Law 19–75, the Court should order
8 the Commonwealth to immediately pay \$6,840,000 to the heirs of the Estate. However, a few days
9 later on December 28, 2016 the NMI Supreme Court issued its ruling in *Commonwealth v. Lot. No.*
10 *218-5 R/W*, 2016 MP 17 (Slip Op. Dec. 28, 2016), which significantly altered how judgment
11 creditors against the Commonwealth can proceed. As a result, Intervenors filed a second motion
12 arguing its position that the Commonwealth should be ordered to immediately make payment
13 taking into account the NMI Supreme Court’s decision in *Lot. No. 218-5 R/W*. 2016 MP 17.
14 Intervenors’ first motion to compel payment is somewhat moot since the legal guideposts
15 underlying the analysis have changed. As such, the Court will focus its analysis on Intervenors
16 second motion, which relies on the law as it currently stands.

17 II. BACKGROUND

18 The events of this case began in March 1993 when the Commonwealth took a number of
19 lots owned by Maria Mangabao. In 1997, the Commonwealth filed its complaint for eminent
20 domain against Defendants. Thereafter, the Commonwealth and the heirs entered into settlement
21 negotiations. In 2007, Intervenors successfully intervened and the parties were able to come to an
22 agreement on several issues and the Court subsequently entered a partial judgment against the
23 Commonwealth in the amount of \$4,196,524. *See Commonwealth v. Lot. No. 353 New-G*, Civ. No.
24 97–0266 (NMI Super. Ct. Jan. 4, 2008) (Partial and Immediate Final Consent Opinion, Order and

1 Judgment for Principal). In October 2009, after holding a trial on the issue, the Court determined
2 that the heirs should receive a pre-judgment interest rate of 6.991%; the Court calculated the final
3 award amount to be \$11,431,662.10. *See Commonwealth v. Lot. No. 353 New-G*, Civ. No. 97-0266
4 (NMI Super. Ct. Oct. 1, 2009) (Order Granting Prejudgment Interest Rate). The Commonwealth
5 utterly failed to pay any portion of the award amount. As a result, Intervenor filed a motion for a
6 writ of execution, which was denied by the Court pursuant to 1 CMC § 7207. *See Commonwealth*
7 *v. Lot. No. 353 New-G*, Civ. No. 97-0266 (NMI Super. Ct. Mar. 14, 2011) (Order Re: Motion for a
8 Writ of Execution and/or Order in Aid of a Judgment). The NMI Supreme Court affirmed the
9 Court's ruling on Intervenor's motion on the grounds that to declare 1 CMC § 7207 unconstitutional
10 would violate the separation of powers doctrine. *See Commonwealth v. Lot No. 353 New G*, 2012
11 MP 6 ¶ 23.¹

12 The NMI Supreme Court also ruled that the Court erred by not awarding Intervenor's post-
13 judgment interest. The case was remanded for a determination of what post-judgment interest rate
14 should apply. *Id.* at ¶ 39-44. In light of the NMI Supreme Court's ruling, the Court held a bench
15 trial on the issue of post-judgment interest and determined that the post-judgment interest rate
16 should be set at 4.136% simple interest. *See Commonwealth v. Lot. No. 353 New-G*, Civ. No. 97-
17 0266 (NMI Super. Ct. Mar. 10, 2014) (Order Establishing Post-Judgment Interest Rate). The
18 Court's decision was appealed and the NMI Supreme Court vacated the 4.136% simple interest rate

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20 ¹ Specifically, the NMI Supreme Court opined:

21 In light of the authority above, we are convinced that a ruling holding section 7207 to be
22 unconstitutional would violate the separation of powers and would eviscerate the independence and
23 integrity of the legislative branch. *See, e.g., Office of Pers. Mgmt.*, 496 U.S. at 425 (“[a]ny exercise of
24 a power granted by the Constitution to” the judicial branch “is limited by a valid reservation of
congressional control over funds in the Treasury.”); *City of Sacramento v. Cal. State Legislature*, 231
Cal. Rptr. 686, 688 (Cal. Ct. App. 1986) (“A ruling that orders the Legislature to enact an
appropriation necessarily implicates the independence and integrity of the Legislature and its ability
to fulfill its mission in checking its coequal branches.”). We therefore hold that section 7207 does not
violate the Takings Clauses. Section 7207 is an enforcement and appropriation provision only, and it
does not take property without just compensation.

1 and remanded the case for the Court to determine an appropriate interest rate. *See Commonwealth v.*
2 *Lot No. 353 New G*, 2015 MP 6 ¶ 37–38. In December 2015, the parties agreed to a stipulation,
3 which provided that the Commonwealth will pay a post-judgment interest rate of 5.63%,
4 compounded annually, on the January 4, 2008 judgment of \$11,431,662.10. Before the June 23,
5 2017 hearing, the Court formally accepted the parties’ stipulation; the post-judgment interest rate is
6 5.63% compounded annually. Currently, payment of the judgment by the Commonwealth is the
7 primary remaining issue in this case. Intervenors have requested that the Court order the
8 Commonwealth to immediately make payment.

9 III. DISCUSSION

10 In *Lot. No. 218-5 R/W*, the NMI Supreme Court reconsidered its earlier ruling that the Court
11 does not have the power to order the Commonwealth to make payment on land compensation
12 judgments unless the Legislature has made an appropriation. 2016 MP at ¶ 17–23. Specifically, the
13 NMI Supreme Court held:

14 [B]ecause the government repeatedly failed to pay land compensation judgments,
15 because the right to just compensation is a well-settled, natural right, because
16 persuasive case law supports the courts’ authority to compel payment, and because
17 principles harmonizing constitutional provisions instruct against interpreting the
18 NMI Appropriations Clause as inhibiting the NMI Takings Clause, we overrule Lot
19 353 to the extent it holds that the Commonwealth courts may not order the
government to pay land compensation judgments in the absence of legislatively
appropriated funds. We now hold that in the context of eminent domain, the
Commonwealth courts have the authority to compel the government to pay
outstanding land compensation judgments even in the absence of legislatively
appropriated funds.

20 *Id.* at ¶ 26.

21 However, while the NMI Supreme Court reconsidered whether the Court can issue an order
22 to compel payment, it determined that writs of execution, 7 CMC §§ 4203–04, are not permissible
23 against the Commonwealth unless there is a statute, which permits otherwise. *Id.* at ¶ 27. Instead,
24 the NMI Supreme Court cited to 7 CMC § 4104, which generally provides: “Enforcement of a

1 judgment may also be affected, if the court deems justice requires and so orders . . . in any other
2 manner known to American common law or common in courts in the United States.” *Lot. No. 218-5*
3 *R/W*, 2016 MP at ¶ 27 nt. 12. The Court has the power to enforce land compensation judgments, but
4 in doing so the Court must carefully tailor its order to “avoid overly restricting the Legislature’s
5 appropriations power, and must order payment of no more than what is owed under the judgment.”
6 *Id.* at ¶ 27.

7 Intervenor’s present motion appears to have been brought as an order in aid of judgment, 7
8 CMC § 4205, which provides:

9 At any time after a finding of the payment of money by one party to another, and
10 before any judgment based thereon has been satisfied in full, either party may apply
11 to the court for an order in aid of judgment. Thereupon the court, after notice to the
12 opposite party, shall hold a hearing on the question of the debtor’s ability to pay and
13 determine the fastest manner in which the debtor can reasonably pay a judgment
14 based on the finding. In making this determination the court shall allow the debtor to
retain such property and such portion of his or her income as may be necessary to
provide the reasonable living requirements of the debtor and any dependents,
including fulfillment of any obligations the debtor may have to any clan, lineage, or
other similar group, in return for which obligations the debtor or dependents, receive
any necessary part of the food, goods, shelter or services required for their living

15 An order in aid of judgment falls within the scope of the NMI Supreme Court’s ruling in *Lot. No.*
16 *218-5 R/W*. 2016 MP at ¶ 27. Yet, when determining the Commonwealth’s ability to pay the Court
17 must show a degree of deference to the Commonwealth’s position. *Id.*

18 Intervenor’s have requested that the Court immediately order the Commonwealth,
19 specifically the Secretary of Finance and Treasurer, to pay the judgment creditors, the heirs of the
20 Estate. Intervenor’s contend that since there is a final judgment and the post-judgment interest rate
21 has been determined the only remaining issue is to stop the Commonwealth from continuing to
22 violate their constitutional rights by ordering the Commonwealth to make payment in full or in part.

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1 Intervenor highlight that the amount owed is readily determinable, as of the date of this order, the
2 Commonwealth owes over \$15,000,000 in principle and interest.²

3 In response, the Commonwealth generally argues: (1) that the Court should not issue an
4 order to compel payment because the Commonwealth does not presently have enough unobligated
5 funds to pay over \$15,000,000 to the heirs of the Estate, and (2) that a stay and/or a status
6 conference would more appropriate at this time. Further, the Commonwealth contends that
7 Intervenor motion is overly adversarial in that the Commonwealth is excited to work with
8 Intervenor to make payment, but that Intervenor need to be patient. The Commonwealth's
9 arguments against the issuance of an order compelling payment are unpersuasive. As the NMI
10 Supreme Court noted in *Lot. No. 218-5 R/W*, the Commonwealth has failed to observe the
11 constitutional rights of its citizens by making virtually no effort to make payment. *Id.* at ¶ 12–16.

12 Here, the Court has heard from the parties on the issue of the Commonwealth's ability to
13 pay. While it is certainly true that finding the necessary funds to make payment is difficult, the
14 Commonwealth is nonetheless required to make payment on the judgment at a reasonable rate and
15 within a reasonable time. The Court commends the Commonwealth for making a payment of
16 \$3,000,000. However, the Court is concerned that the Commonwealth has not taken sufficient steps
17 to make payment in full to the Estate.

18 As such, pursuant to 7 CMC § 4205 the Court **ORDERS** the Commonwealth to begin
19 payments to the heirs of the Estate within thirty (30) days of this order. Should the Commonwealth
20 be unable to make payments and/or unable to fully satisfy the terms of the judgment, the Court
21 **ORDERS** that it file a brief detailing its plan(s) to timely satisfy the obligations previously ordered
22 in this matter. The Court **ORDERS** that if a payment plan is offered, by the Commonwealth or

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24 ² During the June 23, 2017 hearing the Commonwealth represented that the Estate was paid \$3,000,000 on March 3, 2017. The parties did not indicate the exact figure owed at this time, but suffice it to say the Commonwealth still owes over \$15,000,000.

1 stipulated to by the parties, it must cover the full interest rate for each installment plus an additional
2 25% of the installment towards the principal.³ If the Commonwealth fails to make payments, and/or
3 fails to submit a brief indicating its plan(s) to satisfy its obligations, the parties may request an
4 Order to Show Cause requiring the Commonwealth to appear before the Court to explain why it is
5 unable to meet the terms of the Court's order.

6 **IT IS SO ORDERED** this 23rd day of June, 2017.



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9 **ALBERTO C. LAMORENA, III**
Pro Tempore Judge

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³ For example, if the interest for the proposed installment is \$100,000 then the full amount due would be \$125,000.