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

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5	<b>ATOM'S CO., LTD.,</b>	)	<b>SMALL CLAIMS NO. 15-0237</b>
6		)	
7	<b>Plaintiff,</b>	)	<b>WRITTEN DECISION</b>
8		)	<b>FOLLOWING TRIAL</b>
9	<b>v.</b>	)	
10		)	
11	<b>ORLANDO MALLARI,</b>	)	
12		)	
13	<b>Defendant.</b>	)	
14		)	

**I. INTRODUCTION**

This matter came before the Small Claims Court for a bench trial on December 20, 2017 at 1:30 pm in Courtroom 223A. Attorney Michael A. White represented Plaintiff Atom's Co., Ltd. Defendant Orlando Mallari appeared *pro se*.

Defendant leased an apartment unit from the Plaintiff in the Seda Blanca building, but failed to pay five months' rent and fifteen installments for utility bills. Plaintiff requests \$700.00 in unpaid rent, \$627.50 in unpaid utilities, prejudgment interest at twelve percent per annum, plus court costs and attorney's fees. Plaintiff called one witness, an accountant for Plaintiff, and entered three exhibits into evidence in support of its argument during the trial. The accountant confirmed the amounts of unpaid rent and utilities.

Defendant testified on his own behalf and presented one document. Defendant concedes the amounts of unpaid rent and utilities, but contests attorney's fees and costs. Defendant also testified he offered to make payments to Plaintiff to settle the debt, but that his offers were rejected and this suit thereafter filed.

m. white  
pro se

1 **II. FINDINGS OF FACT**

2 Based upon the testimony of the witnesses, arguments, and the submitted evidence, the  
3 Court finds the following facts by a preponderance of the evidence:

- 4 1. On January 21, 2014, Defendant and Plaintiff's General Manager signed a one year  
5 lease agreement for one unit within the Seda Blanca building. *See* Ex. 1.
- 6 2. The lease agreement was set to expire February 23, 2015 and contained a one year term  
7 renewal clause.
- 8 3. Under the lease agreement, Defendant agreed to pay Plaintiff \$150.00 per month in rent  
9 as well as monthly reimbursements for utility bills.
- 10 4. The lease agreement provided for a late payment charge equivalent to ten percent of the  
11 monthly rent, but contains no provision for awarding prejudgment interest.
- 12 5. In the event legal action was taken to enforce the lease, the lease agreement provided  
13 that the prevailing party's reasonable attorney's fees should be paid by the losing party  
14 as fixed by the Court.
- 15 6. Defendant lived in the premises and enjoyed its use in 2014 and 2015, but failed to pay  
16 \$100.00 of rent for February 2015.
- 17 7. Defendant failed to pay rent for the months of March, April, May, and June 2015.
- 18 8. In total, Defendant failed to pay \$700.00 in rent.
- 19 9. Defendant also failed to pay the full utility bills reimbursements from April 1, 2014 to  
20 June 20, 2015.
- 21 10. In total, Defendant failed to pay \$627.50 in utilities.
- 22 11. Defendant's pre-litigation and pre-trial offers to make payments in the principal amount  
23 due to the Plaintiff in an effort to settle the debt were refused.
- 24 /

1 **III. ANALYSIS AND CONCLUSIONS OF LAW**

2 **1. Defendant owes Plaintiff \$1,327.50 under the lease agreement**

3 Neither party disputes the existence of a valid contract lease agreement, which the parties  
4 entered into in January 2014 and wherein Defendant promised to pay rent and utilities in exchange  
5 for the use of Plaintiff’s premises. *See* Ex. 1. Defendant concedes the amounts of unpaid rent and  
6 utilities and breached the contract when he failed to make payments due. Accordingly, Plaintiff is  
7 entitled to judgment for unpaid rent and utilities under the terms of the lease agreement. The Court  
8 therefore finds for Plaintiff in the amount of \$1,327.50.

9 **2. Plaintiff’s claim for prejudgment interest is denied**

10 Plaintiff requests an award of a 12% prejudgment interest rate under section five of the lease  
11 agreement. As an initial matter, it must be noted that unlike eminent domain circumstances (as  
12 described in 1 CMC § 9227); post-judgment awards (as provided for in 7 CMC § 4101); cases  
13 involving usury-law (under 4 CMC § 5301); ‘bounced check’ causes of actions (under 7 CMC §  
14 2442); delinquent child support payment instances (under 8 CMC § 1574) and matters involving  
15 commercial paper (as provided for 5 CMC § 3118); there is “no statutory prejudgment interest  
16 rate” provided for in the Commonwealth body of statutory law. *See Manglona v. Commonwealth*,  
17 2010 MP 10 ¶ 20 (emphasis added).

18 Accordingly, under the *expressio unius est exclusio alterius* principle of statutory  
19 construction, the CNMI Legislature’s explicit inclusion of provisions setting out the circumstances  
20 when (and at what rates) interest can be charged suggests that prejudgment interest should through  
21 implication to be considered as excluded in small claims cases absent some other legal basis.<sup>1</sup>

22  
23 <sup>1</sup> “*Expressio unius est exclusio alterius*” is a Latin phrase used in statutory construction that means when a legislative  
24 body expresses one item of an associated group or series within a statutory scheme but does not express another, it  
intends to exclude the item left unmentioned. *See NLRB v. SW Gen., Inc.*, 137 S. Ct. 929, 933 (2017) (citations  
omitted).

1 Accordingly, as recognized in CNMI judicial decisions—prejudgment interest may only be granted  
2 in the discretion of the trial court when provided for by contract or as a damage award when  
3 necessary to make a plaintiff whole based on a proper showing of evidence. *Isla Dev. Prop., Inc. v.*  
4 *Jang*, 2017 MP 13 ¶ 14 (citations omitted); *Manglona v. Commonwealth*, 2010 MP 10 ¶ 30.

5 In the instant case, the relevant portion of the lease agreement which Plaintiff argues entitles  
6 it to prejudgment interest provides: “In case of default of payment within ten (10) days from its due  
7 date, a late charge of ten percent (10%) of the monthly rent shall be paid in addition to the regular  
8 payment.” Ex. 1 p. 3. Contrary to Plaintiff’s assertion, this language does not envision prejudgment  
9 interest, but only a late charge which Plaintiff waived and wanted instead to substitute with a claim  
10 for prejudgment interest.<sup>2</sup> In sum, there is no provision in the lease agreement that supports  
11 Plaintiff’s claim for prejudgment interest. Further, Plaintiff provided no evidence or authority  
12 which would entitle the Plaintiff to prejudgment interest under the considerations provided in  
13 *Manglona*, 2010 MP 10, and recently confirmed in *Isla Dev. Prop., Inc.*, 2017 MP 13. The Court  
14 therefore denies prejudgment interest.

15 **3. An evidentiary hearing is required to determine “reasonable” attorney’s fees**

16 Plaintiff claims \$350.00 in attorney’s fees under the terms of the lease agreement.  
17 Generally, as recognized by the CNMI Supreme Court, the CNMI judiciary follows the so-called  
18 ‘American Rule’ as to lawsuit expenses. *See Deleon Guerrero v. DPS*, 2013 MP 17 ¶ 21. The  
19 American Rule provides that each party is responsible for paying its own attorney’s fees and costs—  
20 unless specific authority granted by statute, contract, or court rule allows the assessment of those  
21 expenses against the other party. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240,  
22 257 (1975). Here, section twenty-five of the lease agreement expressly provides for the losing  
23 party to pay the prevailing party’s reasonable attorney’s fees, “the amount of which shall be fixed

24 <sup>2</sup> To be clear, Plaintiff’s offer to substitute prejudgment interest in lieu of the late payment penalties is denied.

1 by the court.” Ex. 1 p. 10 (emphasis added). Under this provision, Defendant is liable for  
2 Plaintiff’s reasonable attorney’s fees because Plaintiff prevailed in its breach of lease agreement  
3 claim.

4 However, Plaintiff provides no justification or evidence in support of the amount of the  
5 attorney’s fees requested—other than explaining that, in the past, previous CNMI Small Claims  
6 Court judges awarded such attorney’s fees based on a 1991 Superior Court document entitled  
7 “Amended Notice to Counsel” containing a table of fees to be used in default civil cases.  
8 Notwithstanding previous courts’ (non-binding) decisions and the 1991 default civil case table of  
9 fees, the instant action neither involves a default judgment nor is a standard civil case.

10 More on-point—as recently explained by the CNMI Supreme Court in *In re Malite*, 2016  
11 MP 20 ¶ 17—when determining attorney’s fees a court must always consider whether an award of  
12 attorney’s fees as requested is reasonable and if not, must determine the appropriate award  
13 considering various factors including the specific considerations noted in Model Rule of  
14 Professional Conduct (“MRPC”) 1.5.<sup>3</sup> Under the *In re Malite* holding, this Court concludes that  
15 the table of fees allowed for attorneys in default civil cases is inapplicable in this small claims case  
16 and cannot be used as the automatic basis for determining reasonable attorney’s fees in small claims  
17 court without further evaluation or supporting argument and evidence.<sup>4</sup>

18 \_\_\_\_\_  
19 <sup>3</sup> The MRPC factors for determining the reasonableness of fees include: (1) the time and labor required, the novelty and  
20 difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if  
21 apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;  
22 (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results  
23 obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the  
24 professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing  
the services; and (8) whether the fee is fixed or contingent.

<sup>4</sup> The Court finds a review of the award of attorney fees in small claims cases from other jurisdictions exceptionally  
informative on this point because unlike traditional courts, small claims courts are typically designed involve an  
informal court process for non-lawyers with an express purpose of dispensing fair, speedy justice on small claims up to  
the jurisdictional limit without incurring huge litigation costs. *See Cheung v. Dist. Ct.*, 124 P.3d 550, 552 (2005)  
(emphasis added). In some jurisdictions, attorneys can only appear in small claims court under special circumstances  
with the approval of the court, or for example as a full time employee of a corporate client. *See, e.g.*, Colorado Revised  
Statutes § 13-6-407(2)(a)(II). In a handful of states, including California, the parties themselves must appear in small

1 Accordingly, as Plaintiff's counsel depended on the table of fees for default civil cases to  
2 request fees in this case without presenting additional argument or evidence, no information is  
3 available to determine what would be an appropriate award of attorney fees under *Malite* and the  
4 MRPC; thus an evidentiary hearing is required to determine reasonable attorney fees in this matter.  
5 Plaintiff's counsel shall therefore provide the Court relevant information, fee or billing agreements,  
6 and any other evidence believed appropriate that concerns the legal authority for awarding attorney  
7 fees in small claims cases.<sup>5</sup> This should include information regarding the number of hours actually  
8 spent on the case, the hourly rate for the legal services provided, and any other fact or argument  
9 relevant to assist the Court to determine reasonable fees. The Court therefore withholds ruling on  
10 attorney's fees and sets an evidentiary hearing on the issue as provided below.

#### 11 **4. Plaintiff's claim for costs is denied**

12 Plaintiff claims \$55.00 in court costs. As stated above, the American Rule is that parties  
13 pay for their own litigation costs. *See Deleon Guerrero v. DPS*, 2013 MP 17 ¶ 21. However,  
14 statutes, contracts, or court rules may alter the American Rule. *See Alyeska Pipeline Service Co.*,  
15 421 U.S. at 257. In this case, the lease agreement does not provide for the losing party to pay court  
16 or other legal costs (other than reasonable attorney's fees fixed by the court). If costs were to have

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17 claims court on their own—although attorneys may provide advice to a party either before or after the commencement of  
18 the action. *See, e.g.*, California Code, Code of Civil Procedure - CCP § 116.530. In other jurisdictions, no attorney's  
19 fees are allowed for either party to a small claims action. *See, e.g.*, Nevada Revised Statutes 73.040; *see also* Arizona  
20 Revised Statutes 22-512(7)(an attorney-at-law shall not appear or take any part in the filing or prosecution or defense of  
21 any matter designated as a small claim). In still other courts, attorney's fees are capped and/or will only be awarded if  
22 they are expressly provided for in a contract and supported by evidence as to their reasonableness from the lawyer  
23 requesting them. *See, e.g.*, State of Indiana, County of Marion, LR49-SC00-502/Attorney Fees. However, in stark  
24 contrast to most other jurisdictions, the Court takes judicial notice, pursuant to NMI R. Evid. 201, that the vast majority  
of small claims court cases filed in the CNMI Superior Court (372 out of the 415 filed in 2017) were brought by  
attorneys in private practice against pro se defendants. This is so even though CNMI Rule of Civil Procedure Rule 83  
(Small Claims Procedure) provides that parties are to be encouraged to handle small claims personally without counsel.  
Accordingly, this incongruity and the practice of small claims courts from other jurisdictions supports the Court's  
determination that attorney's fees in CNMI small claims cases should be revisited and require particularized  
consideration given that small claims cases are generally intended to serve a unique civic purpose and provide  
procedures for non-lawyers to have inexpensive access to the judicial system.

<sup>5</sup> Evidence concerning legal authority should address the considerations of *In re Malite*, 2016 MP 20, and the MRPC.  
*See* MRPC 1.5(a), *supra* note 2.

1 been recoverable – such a provision could have contract which does provide for the collection of  
2 attorney fees. Nor is there relevant statutory authority or rule of court authorizing an automatic  
3 shift of the burden of legal expenses of this case to Defendant.<sup>6</sup> Accordingly, the Court denies  
4 Plaintiff's request for \$55.00 in court costs under the specific facts of this case because such costs  
5 are not explicitly provided for in the lease agreement and Plaintiff provided no other arguments for  
6 their award.<sup>7</sup>

7 **V. CONCLUSION**

8 For the foregoing reasons, the Court hereby **FINDS** for Plaintiff in the amount of \$700.00 in  
9 unpaid rent and \$627.50 in unpaid utilities. The Court **DENIES** the award of court costs. The Court  
10 **AWARDS** Plaintiff \$1,327.50. The Court further **ORDERS** an evidentiary hearing set for  
11 **February 13, 2018 at 1:30 p.m.** on the issue of reasonable attorney's fees. Plaintiff's counsel  
12 should submit the necessary information and other relevant evidence before that date.

13  
14 **IT IS SO ORDERED** this 12<sup>th</sup> day of January, 2018.

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17 **Wesley M. Bogdan, Associate Judge**

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20 \_\_\_\_\_  
21 <sup>6</sup> Commonwealth Rule of Civil Procedure 83 provides no guidance as to the appropriate conditions for awarding costs  
22 in small claims court cases. As noted, Rule 83 provides for less judicial formalities and permits any person to file a  
23 case under this Rule for “any action within the jurisdiction of the court involving a claim the value of which is five  
24 thousand (\$5,000.00) dollars or less, *exclusive of interest, attorneys' fees, and costs.*” (emphasis added). This language  
clearly suggests that these costs may be recoverable in certain situations, but does not *de facto* alter the American Rule  
or explain when they are to be awarded.

<sup>7</sup> Additionally, the lease in question contains a provision requiring “good faith” in settling matters in dispute.  
Defendant testified that at the time in question he worked for Plaintiff and rented the apartment from Plaintiff.  
Defendant acknowledged owing the underlying debt both before the case was filed and after it was initiated and further  
testified that he offered to make payments on the debt to Plaintiff, who rejected the offer without providing justification.