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

ISLAND VIEWERS,)	SMALL CLAIMS CASE NO. 17-0409
)	
Plaintiff,)	WRITTEN DECISION FOLLOWING
)	DENIAL OF PREJUDGMENT
v.)	INTEREST
)	
MARIANA ENTERTAINMENT, LLC,)	
d.b.a., CLUB 88,)	
)	
Defendant.)	

I. INTRODUCTION AND FACTS

THIS MATTER came before the Court for a prejudgment hearing on January 11, 2018 at 9:00 a.m. in Courtroom 223A. Plaintiff Island Viewers appeared through attorney Michael White. Defendant Mariana Entertainment, LLC, d.b.a., Club 88 did not appear. The case involves a contract for advertising wherein Plaintiff agreed to publish Defendant's advertisements for the sum of \$1,000.00 per publication issue of the Saipan Guide Map. Plaintiff prays for \$1,000.00 in unpaid principal under the contract, \$78.16 in prejudgment interest, and \$55.00 in costs.

During the hearing, Plaintiff argued that prejudgment interest is appropriate based on the Commonwealth Supreme Court's holding in "Manglona" and on Section 354 of the "Restatement of Contracts." When the Court requested additional support or explanation, Plaintiff's counsel first argued it was his client's right. He then referenced a provision in the underlying contract and argued that Plaintiff was also entitled to an award of a \$25.00 late fee as provided in Section 3(d) of the contract.

Following a review of the contractual document and based on arguments presented, the Court denied the request for prejudgment interest as the written contract contains no provision

1 providing for any type of interest in case of default. The Court then awarded a \$25.00 late fee, the
2 \$1,000.00 unpaid principle amount, and \$55.00 in costs. Plaintiff then requested a written decision
3 regarding the denial of prejudgment interest, which follows.

4 II. LEGAL STANDARD

5 As an initial matter, the Court notes that “[t]here is no *statutory* prejudgment interest rate in
6 the Commonwealth.” *Isla Dev. Prop., Inc. v. Jang*, 2017 MP 13 ¶14 (hereinafter “*Isla*”) (quoting
7 *Manglona v. Commonwealth*, 2010 MP 10 ¶ 20) (emphasis added). To be clear, although the CNMI
8 Legislature has set out in statute specific circumstances and types of cases in which interest may be
9 awarded (and at what specific rates), there is no general statutory basis for an award of prejudgment
10 interest at any rate in the CNMI.¹ The CNMI Legislature’s enactment of laws setting out the legal
11 circumstances when (and at what rates) interest can be charged suggests that prejudgment interest,
12 through implication, should be considered as excluded in small claims cases—unless there is some
13 other legal basis upon which such an award may be based.²

14 However, Commonwealth Rule of Civil Procedure 83 (Small Claims Procedure) provides
15 no instruction as to when, at what rate and/or under what circumstances the Court can award
16 prejudgment interest (or costs or attorney fees). Rule 83 simply provides that any person may file a
17 case under this Rule for any action within the jurisdiction of the court involving a claim the value of
18 which is “five thousand (\$5,000.00) dollars or less, *exclusive of interest, attorneys’ fees, and costs.*”
19 (emphasis added). This language suggests that interest, attorneys’ fees, and cost may be recoverable
20 in small claim cases, but it certainly does not by default automatically provide for an award of

21 ¹ In the CNMI, awards of various types interest and at what interest rate are explicitly provided for by statute in eminent
22 domain cases (as described in 1 CMC § 9227); post-judgment awards (as provided for in 7 CMC § 4101); cases
23 involving usury-law (under 4 CMC § 5301); ‘bounced check’ causes of actions (under 7 CMC § 2442); delinquent child
24 support payment matters (under 8 CMC § 1574); and controversies involving commercial paper (as provided for 5
CMC § 3118).

²This principle is called ‘*expressio unius est exclusio alterius*,’ which provides that when somethings are mentioned and
provided for expressly in a statute—it leads to the presumption that other things not mentioned are excluded. *See NLRB*
v. SW Gen., Inc., 137 S. Ct. 929, 933 (2017) (citations omitted).

1 prejudgment interest (or attorneys' fees or costs).³ As explained by the United States Supreme
2 Court, "interest" is not recovered according to a rigid theory of compensation for money withheld,
3 but is given in response to considerations of fairness and an award of prejudgment interest should
4 be based on the merits of the case and the extent of the plaintiff's damages. *Blau v. Lehman*, 368
5 U.S. 403, 414 (1962). Accordingly, as no specific statutory authority or Court Rule exists for an
6 automatic awarding of prejudgment interest, as set out in CNMI common-law, prejudgment interest
7 should only be granted in the discretion of the trial court when explicitly provided for by contract or
8 as a measure of damages necessary to make a plaintiff whole based on a proper showing of
9 evidence. *Isla*, 2017 MP 13 ¶ 14 (citing *Manglona v. Baza*, 2012 MP 4 ¶ 23[sic]).

10 III. DISCUSSION

11 Here, Plaintiff prayed for prejudgment interest, but neither provided evidence of controlling
12 contract language that allows the award of prejudgment interest nor provided any substantiated
13 equitable considerations upon which the Court could base an award of prejudgment interest. When
14 the Court afforded Plaintiff the opportunity to present a more specific evidentiary or legal basis for
15 awarding prejudgment interest, Plaintiff simply provided a general case name and referenced a
16 provision of the Restatement of Contracts as justification, but provided no legal analysis or
17 evidence supporting the requested award of prejudgment interest. Plaintiff's assertions are
18 addressed in turn below and fail for the following reasons:

19 *a. Basis in the "Restatement of Contracts"*

20 First, Plaintiff orally pointed to the Restatement of Contracts "Section 354" for its
21 contention that it has a general right to prejudgment interest. The Restatement 2d of Contracts
22 (1981) Section 354 provides:

23 _____
24 ³ The Court notes further that the provision in Rule 83 which explains that the Commonwealth Rules of Civil Procedure shall govern any matter in a small claims proceedings which is not expressly covered by Rule 83 is not helpful because there are no provisions in the Rules that provide for prejudgment interest. *See* NMI R. Civ. P. 83(k).

1 (1) If the breach consists of a failure to pay a definite sum in money or to render a
2 performance with fixed or ascertainable monetary value, interest is recoverable
3 from the time for performance on the amount due less all deductions to which the
4 party in breach is entitled.

5 (2) In any other case, such interest may be allowed as justice requires on the
6 amount that would have been just compensation had it been paid when
7 performance was due.

8 However, reliance on Section 354 of the Restatement fails because pursuant to 7 CMC §
9 3401—a CNMI Court should only look to the Restatement of Laws when there is an absence of
10 contrary controlling written law or customary law of the Commonwealth. As discussed below, the
11 Commonwealth Supreme Court has provided sufficient decisions on the issue of prejudgment
12 interest, which are controlling local written case law and which are contrary to the Restatement
13 cited by Plaintiff. Thus, Restatement of Contracts section 354 does not control.⁴

14 *b. Written Law of the Commonwealth Supreme Court Concerning Prejudgment Interest*

15 Moreover, Plaintiff is not entitled to prejudgment interest under the published written
16 decisions concerning an award of this type of interest in the CNMI under the facts of this case. In
17 short, if the underlying contract does not provide for prejudgment interest, a request for an award of
18 prejudgment interest is not warranted absent the establishment of a sufficient factual basis
19 surrounding the formation of the contract which would support such an equitable award of such
20 damages based on the wronged party’s actual losses. *See generally Isla*, 2017 MP 13; *Manglona v.*
Commonwealth, 2010 MP 10; *Manglona v. Commonwealth*, 2005 MP 15 (hereinafter “*Manglona*
2010” and “*Manglona 2005*”).

21 *1. Isla*

22 The *Isla Dev. Prop., Inc. v. Jang*, 2017 MP 13 decision requires a plaintiff to provide a
23 factual basis and evidence of damages concerning actual losses before prejudgment interest can be

24 ⁴ In the CNMI, “written law” includes the NMI Constitution and NMI statutes, *case law*, court rules, legislative rules and administrative rules, as well as the Covenant and provisions of the U.S. Constitution, laws and treaties applicable under the Covenant. *In re Buckingham*, 2012 MP 15 ¶ 12 (citation omitted) (emphasis added).

1 awarded for the breach of a contract that does not expressly provide for prejudgment interest. *Isla*,
2 2017 MP 13 ¶ 16. This holding conflicts with the Restatement 2d of Contracts Section 354(1),
3 which essentially provides that prejudgment interest may be awarded for ascertainable or fixed
4 amounts due under a contract as a matter of course. In other words, the Commonwealth Supreme
5 Court’s clarification on prejudgment interest in *Isla* established that a Plaintiff must provide a
6 sufficient evidentiary basis for an award of prejudgment interest.⁵

7 2. *Manglona 2010*

8 *Isla* is supported by the holding in *Manglona 2010* which in essence confirms that although
9 a court may award prejudgment interest in the absence of explicit statutory authorization, the award
10 must be equitable and grounded in considerations of fairness and focused on making the wronged
11 party whole. *See Manglona 2010*, ¶¶ 29–30; *see also Isla*, 2017 MP 13 ¶ 15. Specifically, the
12 Commonwealth Supreme Court in *Manglona 2010* held that, a court should consider the factual
13 circumstances surrounding the contract to decide whether prejudgment interest is warranted and
14 what interest rate to use, if any. *Manglona 2010*, ¶ 30. Also, while the post-judgment interest statute
15 may influence a court in determining the appropriate prejudgment interest rate, it cannot be the only
16 basis for the determination. *Id.* Moreover, where the contract does not provide for prejudgment
17 interest an award must be based on equity to compensate a party for its “actual losses.” *Id.*

18 3. *Manglona 2005*

19 Finally, the *Manglona 2005* decision also does not establish a legal foundation upon which
20 Plaintiff is automatically entitled to an award of prejudgment interest (and is clearly distinguishable

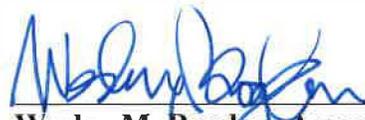
21 ⁵ In *Isla*, the defendant repeatedly failed to pay the plaintiff money owed and breached a promissory note for payment
22 of back rent due to the plaintiff. *Isla*, 2017 MP 13 ¶¶ 2-3. The lower court held that under the terms of the promissory
23 note, the parties intended for interest to accrue on unpaid amounts due and awarded prejudgment interest. *Id.* ¶ 3. The
24 Commonwealth Supreme Court reversed and remanded the case to the lower court, finding the promissory note did not
provide for prejudgment interest and holding that, in absence of controlling statutory or contract language, an award
for prejudgment interest required arguments on equity and presentation of facts and evidence concerning damages and
the parties’ actual losses. *Id.* ¶¶ 16-17 (emphasis added).

1 from the present case). In *Manglona 2005*, the Commonwealth Supreme Court was faced, in part,
2 with the question of whether the Government of the CNMI could be required to pay prejudgment
3 interest when it breached a lease agreement that contained a provision for prejudgment interest to
4 accrue. *See Manglona 2005*, ¶¶ 40-44. While the Supreme Court looked to the Restatement of
5 Contracts cited by Plaintiff as part of its analysis, the court did so for its holding that deductions for
6 failure to mitigate damages should be subtracted from the award of prejudgment interest when a
7 sovereign government is a party. *Id.* ¶¶ 41-46. The appropriateness of the award for prejudgment
8 interest was not based upon the Restatement, but upon the terms of the underlying contract itself
9 which provided for an award of interest. *Id.* ¶ 44. Unlike *Manglona 2005*, the contract at issue in
10 the instant case does not provide for prejudgment interest to accrue or to be awarded in any form.
11 This Court, accordingly, does not find sufficient basis in *Manglona 2005* or *Manglona 2010* to
12 support Plaintiff's unsupported contention that it has a general right to prejudgment interest for any
13 breach of contract.

14 IV. CONCLUSION

15 For the reasons stated above, the Court **DENIES** the award of prejudgment interest. Further,
16 based on the matters adduced in court and for good cause shown, the Court **GRANTS** Plaintiff
17 \$1,000.00 in unpaid principle due under the contract; \$55.00 in costs; and \$25.00 in late fees.

18 **IT IS SO ORDERED** this 5th day of February 2018.

19
20 
21 **Wesley M. Bogdan, Associate Judge**