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FOR PUBLICATION

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

**CONSTRUCTION & MATERIAL
 SUPPLY, INC.,**

CIVIL CASE NO. 18-0157

Plaintiff,

v.

**ORDER AND FINAL JUDGMENT
 DENYING PREJUDGMENT INTEREST**

**HERMAN P. SABLAN, dba H & H
 SMALL PROJECT CONSTRUCTION,**

Defendant.

I. INTRODUCTION

THIS MATTER came before the Court upon Plaintiff's Motion for Default Judgment on January 29, 2019 at 9:00 a.m. in Courtroom 212A of the Marianas Business Plaza. Attorney Michael A. White appeared on behalf of Plaintiff Construction & Material Supply, Inc. ("Plaintiff"). Defendant Herman P. Sablan ("Defendant") appeared *pro se*.

This case stems from unpaid merchandise sold and delivered, and equipment rented, by Plaintiff to Defendant. At the hearing, Plaintiff requested for judgment against Defendant in the total amount of \$20,889.28—comprised of a principal amount and prejudgment interest at 12% per annum from May 22, 2017 to the present. Plaintiff also requested for attorney fees and costs to be determined by the Court at a later time. After considering the arguments presented by both of the

By order of the Court, Associate Judge Wesley M. Bogdan

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1 parties during the hearing, the Court makes the following findings of fact and issues the instant
2 Judgment.

3 II. FINDINGS OF FACT

- 4 1. Plaintiff Construction & Material Supply, Inc. is a CNMI corporation.
- 5 2. Defendant Herman P. Sablan is a resident of Saipan, currently or formerly doing business as
6 H & H Small Project Construction.
- 7 3. Plaintiff claims that Defendant is indebted to Plaintiff for merchandise sold and delivered,
8 and for equipment rented, in the principal amount of \$17,366.50.
- 9 4. Despite demand, Defendant has failed to pay the total amount due or any part thereof.
- 10 5. On June 2, 2018, Plaintiff filed a Complaint against Defendant requesting \$17,366.50 in
11 principal, \$3,522.78 in prejudgment interest at 12% per annum from May 22, 2017, and
12 reasonable attorney's fees and court costs. Plaintiff also requested interest on the total
13 amount of the award at the maximum rate provided by law from the date of judgment.
- 14 6. Plaintiff asserts that it is entitled to prejudgment interest and reasonable attorney's fees and
15 costs pursuant to a contract as evidenced by a series of invoices, one of which was filed as
16 Exhibit A of Plaintiff's Complaint. (Pl.'s Compl, Ex. A).¹
- 17 7. The referenced exhibit is a single-page document titled Construction & Material Supply,
18 Inc., Invoice No. 101804 (hereinafter "Invoice"). *Id.*
- 19 8. The Invoice is dated May 22, 2017, billed to H & H Small Project Construction, and
20 unsigned. *Id.*
- 21 9. The Invoice charges Defendant \$4,740.00 for 37 "3000 PSI" items and a pump truck rental.
22 *Id.*

23
24 ¹ The exhibit is attached below as Attachment 1.

1 10. The Invoice includes language at the bottom left of the page that states:

2 Customer agrees to pay this invoice to CMS, Inc. according to the above
3 terms. All overdue invoices will be charge 1.5% per month, plus all attorney's
4 and collection fees in case of default of payment. All returned checks will be
5 charge \$50.00 each.

6 11. Defendant does not dispute that it owes Plaintiff the principal amount of \$17,366.50.

7 12. Defendant does dispute and objects to Plaintiff's request for prejudgment interest based on
8 an unsigned Invoice.

9 III. LEGAL STANDARD

10 There are no provisions of law that provide an automatic award of prejudgment interest in
11 CNMI Superior Court judgments. Accordingly, under CNMI Supreme Court instruction,
12 prejudgment interest should only be granted in the discretion of the trial court when expressly
13 provided for by statute, the terms of a contract, or as a discretionary damage award made by a Court
14 when necessary to make a plaintiff whole based on a proper showing of evidence. *Isla Dev. Prop.,*
15 *Inc. v. Jang*, 2017 MP 13 ¶ 14 (citing *Manglona v. Baza*, 2012 MP 4 ¶ 23).

16 IV. DISCUSSION

17 This is a somewhat challenging case in that Plaintiff forcefully argues it has some
18 "automatic" right to prejudgment interest, but has failed to present a legal basis or any evidence in
19 support of its claim. As an initial note, awarding prejudgment interest is a rather complex area of
20 law without great clarity here in the CNMI (*and elsewhere for that matter*). The United States
21 Supreme Court explained over eighty years ago that "liability for interest is of relatively recent
22 origin and the rationale of its recognition or denial is not always clear." *Bd. of Cnty. Comm'rs v.*
23 *United States*, 308 U.S. 343, 351 (1939).

24 Here, Plaintiff demands \$3,522.78 in prejudgment interest as damages for Defendant's
nonpayment on a contract. However, Plaintiff did not introduce any signed or written contract with

1 the Defendant or much less identify any provisions upon which a prejudgment interest award may
2 be based. Instead, Plaintiff simply provided an unsigned document entitled “Invoice” addressed to
3 the Defendant and asserts that one of the provisions in that document justifies and supports its claim
4 for prejudgment interest. (Pl.’s Comp., Ex. 1).

5 Despite Plaintiff’s assertion, the Court finds no provision in the submitted Invoice that
6 allows prejudgment interest to be imposed on the Defendant—or that even suggests prejudgment
7 interest was contemplated by either party. Under a plain reading of the Invoice provision relied on
8 by Plaintiff, Defendant agreed to pay: (i) the invoice according to the terms listed; (ii) a charge for
9 overdue invoices at 1.5% per month; (iii) all attorney’s and collection fees in case of default of
10 payment; and (iv) a returned check charge of \$50.00 each. The provision does not at all mention
11 prejudgment interest.

12 Moreover, Plaintiff’s repeated assertion that the Invoice creates a contract between Plaintiff
13 and Defendant is without legal support and seems completely unfounded. At the most basic level
14 of inquiry, an invoice is an “itemized list of goods or services furnished by a seller to a buyer,
15 usually specifying the price and terms of sale.” Black’s Law Dictionary (10th Ed. 2014). As defined
16 by the United States Supreme Court, an invoice is a “mere detailed statement of the nature, quantity
17 and the cost or price of the things invoiced.” *Sturm v. Boker*, 150 U.S. 312, 328 (1893).

18 More directly on point (and as clarified in a recent appeal decision from the State of
19 California), an unsigned invoice “cannot on [its] own create a contract or add terms to a contract.”
20 *C9 Ventures v. SVC-West, L.P.*, 202 Cal. App. 4th 1483, 1501 (2012) (citing *India Paint & Lacquer*
21 *Co. v. United Steel Prod. Corp.*, 123 Cal. App. 2d 597, 607 (1954)). Standing alone, the unsigned
22 Invoice submitted in the instant case does not affirmatively establish the existence of a contract
23 with the Defendant upon which prejudgment interest can be granted. Based on the parties’
24

1 arguments and the evidence presented, the Court cannot conclude that prejudgment interest was part
2 of an agreement that the Defendant entered into with the Plaintiff.

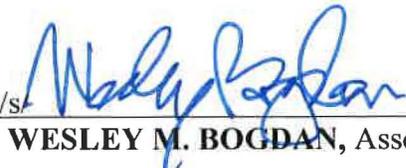
3 Further, an additional reason exists to deny Plaintiff's somewhat brazen claim that it is
4 automatically entitled to prejudgment interest. As long recognized by the United States Supreme
5 Court, prejudgment interest "is not recovered according to a rigid theory of compensation for
6 money withheld, but is given in response to considerations of fairness. It is denied when its exaction
7 would be inequitable." *Blau v. Lehman*, 368 U.S. 403, 414 (1962) (quoting *Bd. of Comm'rs v.*
8 *United States*, 308 U.S. 343, 352 (1939)) (internal quotation marks omitted). Plaintiff in this action,
9 however, has not presented any evidence or equitable reasons that would justify exercising the
10 Court's discretion to award prejudgment interest in equity.

11 Defendant has flatly denied agreeing to pay for prejudgment interest in the instant case.
12 Therefore, without a contract that provides for prejudgment interest, a proper showing of evidence,
13 or a statutory basis, the Court declines to award Plaintiff the requested \$3,522.78 in interest.

14 **V. CONCLUSION**

15 Plaintiff's request for a judgment in the principal amount of \$17,366.50 is hereby
16 **GRANTED**. Plaintiff's request for \$3,522.78 in prejudgment interest is hereby **DENIED**.

17 **IT IS SO ORDERED** this 15th day of February, 2019.

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19 
20 WESLEY M. BOGDAN, Associate Judge



Construction & Material Supply, Inc.
 P.O. Box 500609, Saipan, MP 96950, U.S.A.
 Tel.No.: (670)234-6136 234-1268(Office)

Attachment 1 *Ex 14 A*

Invoice

| | |
|-----------|-------------|
| Date | Invoice No. |
| 5/22/2017 | 101804 |

| |
|---|
| Bill To |
| H & H Small Project Const. Herman Sablan PPP 1021, P.O. Box 10000 Saipan, MP 96950 |

| |
|--|
| Ship To |
| H & H Small Project Const Joseph Pangelinan Dandan |

| P.O. Number | Terms | Rep | Ship Date | Via | F.O.B. | Project |
|-------------|-------|-----|-----------|-----|--------|---------|
| | | | 5/22/2017 | | | |

| Quantity | Item Code | Description | Price Each | Amount |
|----------|-----------|-------------------|------------|----------|
| 37 | RMC330 | 3000 PSI | 120.00 | 4,440.00 |
| 2 | PT-100 | Pump Truck Rental | 150.00 | 300.00 |
| | | Sales Tax | 0.00% | 0.00 |

| | | |
|--|--------------|-------------------|
| Customer agrees to pay this invoice to CMS, Inc. according to the above terms. All overdue invoices will be charge 1.5% per month, plus all attorney's and collection fees in case of default of payment. All returned checks will be charge \$50.00 each. | Total | \$4,740.00 |
|--|--------------|-------------------|