IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MARINE REVITALIZATION CORPORATION AND ANTHONY PELLEGRINO, IN HIS PERSONAL CAPACITY AND AS AN OFFICER OF MARINE REVITALIZATION CORPORATION,

Plaintiffs-Appellees,

v.

DEPARTMENT OF LAND AND NATURAL RESOURCES,

Defendant-Appellant.

SUPREME COURT NO. 2009-SCC-0016-CIV
SUPERIOR COURT NO. 04-0589

DENIAL OF PETITION FOR REHEARING

Cite as: 2011 MP 2

Decided February 23, 2011

Edward Buckingham and David Lochabay, Saipan, Northern Mariana Islands for Defendant-Appellant
Michael Dotts, Saipan, Northern Mariana Islands for Plaintiffs-Appellees
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; HERBERT D. SOLL, Justice Pro Tem.

DEMAPAN, C.J.:

¶ 1 On December 14, 2010, this Court issued *Marine Revitalization Corp. v. Department of Land and Natural Resources*, 2010 MP 18 (Slip Opinion, Dec. 14 2010), holding in pertinent part that post-judgment interest does not accrue against the government on either Marine Revitalization Corporation's ("MRC") judgment or on any money generally appropriated for the payment of judgments. On December 28, 2010, MRC filed a petition for rehearing requesting that the Court delete paragraph forty-six from the opinion. The Court, in paragraph forty-six, *sua sponte* held that post-judgment interest could not accrue on the judgment-debt. MRC argues that since the issue of interest was not raised by either party, this Court lacked the authority to *sua sponte* raise and decide it. MRC further maintains that this Court incorrectly applied the law to the facts of the case in deciding that post-judgment interest could not accrue against the government. We hold that the Court possesses the inherent authority to *sua sponte* raise and decide certain issues, and that we properly decided that post-judgment interest does not accrue against the government for this judgment-debt. Therefore, we DENY the petition for rehearing.

I

¶ 2 A petition for rehearing "must state with particularity each point of law or fact that the petitioner believes the Court has overlooked or misapprehended . . . ." NMI Sup. Ct. R. 40(a)(2). A petition should not be a "rehash of an issue and argument already raised and decided." *In re Estate of Deleon Guerrero*, 1 NMI 324, 327 (1990).

II

1. The Court Properly Sua Sponte Raised the Issue

A. Inherent authority

¶ 3 As a general matter, this Court will not consider issues that were not raised at trial or on appeal. *Indep. Towers of Wash. v. State of Wash.*, 350 F.3d 925, 929 (9th Cir. 2003). The general rule, however, does not restrict our ability to *sua sponte* raise and decide issues. *Tempelis v. Aetna Cas. & Sur. Co.*, 485 N.W.2d 217, 219 (Wisc. 1992). In *Tempelis*, the Wisconsin Supreme Court held that an appeals court can *sua sponte* correct a legal error made by the trial court regardless of whether the issue was raised by the parties. In discussing an earlier case that approved of this practice, the court stated "that [w]hile the court of appeals had no obligation to look beyond the issues presented by [the party], it was within the court's discretion to do so." *Id*. at 219-20 (quotation and citation omitted). The court held that the appeals court was well within its authority to find that the contested contract was illegal on its face and thus unenforceable. *Id*. at 220. The court concluded by stating that the appellate court properly "exercised its discretion and corrected what it viewed as a gross, unjust error of law." *Id*. Similarly, in *Foley v. Lowell Sun Publishing Co.*, 533 N.E.2d 196, 197 (Mass. 1989), the plaintiff alleged that it was improper for the

appellate court to affirm a grant of summary judgment for reasons different than those given by the trial court and neither briefed nor argued by the parties on appeal. The plaintiff contended that by ruling on issues not raised by the parties, the appellate court denied him due process of law. *Id*. The Massachusetts Supreme Court held that while a court is not obligated to consider an issue not raised by the parties, it is "not prohibited from so doing, and may decide cases on issues or theories not raised." *Id*. The issue decided, whether a statement was defamatory, was purely a question of law that was well within the appellate court's discretion to *sua sponte* raise, consider, and decide. *Id*.

¶ 4 In a petition for rehearing it is MRC's duty to state with particularity each point of law we either misapprehended or overlooked. NMI Sup. Ct. R. 40(a)(2). None of MRC's cases stand for the principle that a reviewing court cannot *sua sponte* raise issues. In all of the cases MRC cited in its petition, the courts refused to consider issues that were inadequately briefed or argued; none of the cases held that a court could not consider issues not raised by the parties. For example, in *Independent Towers of Washington*, the plaintiff made legal assertions unsupported by clear reasoning, research, and citation to the record. 350 F.3d at 929. Instead, the plaintiff's brief contained bullet points of challenged regulations, which the court characterized as a "spaghetti approach" to briefing. *Id*. As a result, the court refused to consider the argument. Nowhere in the opinion, however, does the court discuss its ability to consider issues not raised by the parties—instead the court refused to consider issues inadequately raised. *Id*. 929-30. Similarly, in *Greenwood v. Federal Aviation Administration*, 28 F.3d 971, 977 (9th Cir. 2008), the court refused to consider an argument that was difficult to decipher and not supported with authority. *Greenwood* is legally and factually distinct from the instant petition because the issue in that case was not whether the court could address an issue not raised, but under what circumstances the court would not address an issue that was insufficiently raised. *See Luddington v. Indiana Bell Tel. Co.*, 966 F.2d 225, 230 (7th Cir. 1992) (refusing to consider a poorly presented argument); *Wilson v. Carnahan*, 25 S.W.3d 664, 667 (Mo. App. 2000) (dismissing an appeal for failure to comply with the court's briefing requirements).[1]

¶ 5 A thorough review of MRC's cases reveals that none concern an appellate court *sua sponte* considering issues. The party petitioning for a rehearing must specifically bring to the Court's attention any legal error that it believes the Court made; in this instance, MRC has failed to adequately support its argument with on-point legal authority. *See* NMI Sup. Ct. R. 40(a)(2). In light of all of the cases discussed above, we do possess the inherent authority to *sua sponte* raise and decide issues that are questions of law that do not turn on disputed facts. Turning to this case, the issue of whether MRC is entitled to post-judgment interest does not turn on disputed facts. The parties are in agreement that neither Public Law 9-

[1] MRC also cites *Hardage v. CBS Broadcasting, Inc.*, 433 F.3d 672, 672 (9th Cir. 2006). *Hardage* is a one paragraph denial of a petition for rehearing, and nowhere does the denial state that a court is forbidden from *sua sponte* raising issues.

46 nor the contract entered into between DLNR and MRC provided for post-judgment interest. Whether the government is liable for interest is purely a legal question because in the absence of its contractual consent to such a remedy, a statute must provide for an award of post-judgment interest. Therefore, we can *sua sponte* raise and decide the issue of post-judgment interest.

B. Due process

¶ 6 MRC further argues that our raising and deciding the interest issue deprives it of a property right without due process of law. MRC fails to provide the Court with any authority explaining how the interest awarded under the third order in aid of judgment constitutes a property right subject to due process protections. While DLNR's authority is not directly on-point, it nevertheless cites to several cases that stand for the proposition that after a judgment has issued, but before it has become final and non-reviewable, a change in the law that affects the judgment does not deny the holder of the judgment due process because a non-final judgment is not a vested property right.

¶ 7 In *Hammond v. United States*, 786 F.2d 8, 12 (1st Cir. 1986), the court held that Congress did not deny a plaintiff her right to due process when it passed a statute that took away her tort common law cause of action. Even though the case was already filed, she could not recover under her tort theory. *Id*. The court held that no vested right exists in a common law cause of action until a final and non-reviewable judgment issues. *Id*. Similarly, in *In re Duggan*, 877 N.E.2d 1140 (Ill. App. Ct. 2007), a situation arose where a change in the statutory law occurred after the trial court entered its judgment but while the case was still on appeal. The court stated:

> [A] right has not vested until it is so perfected, complete, and unconditional that it may be equated with a property interest. A litigant may have a vested right in a final judgment, as such a judgment is a form of property that is protected by due process from destruction or impairment by subsequent retroactive legislation. However, the trial court judgment here is not a final judgment in that sense. A judgment that is in the process of being appealed is not a final judgment. Under Illinois law, a judgment becomes a vested right of property *once it is no longer subject to review or modification.*

Id. at 1144-45 (citations and quotations omitted). These cases illustrate that a judgment does not constitute a property right subject to due process protections until the judgment is final and no longer reviewable. Until that time, any remedy provided by a non-final judgment can be stripped away from a party without running afoul of due process. Furthermore, while the issue before us does not concern a change in the statutory law, our decision to correct a clear legal error made by the trial court is sufficiently similar because both involve the interpretation and application of guiding legal principles. Turning to this appeal, MRC's judgment does not award it the contested post-judgment interest.[2] The contested order in

[2] The judgment does incorporate an earlier interest amount, but the government stipulated to the total award, and thus, this is not an issue.

aid of judgment awarded MRC the post-judgment interest, and that order is currently under review by this Court. Since the order is under review, it does not vest MRC with a property right, and therefore, this Court's decision to deny MRC post-judgment interest does not deny it its right to due process.[3]

C. Ripeness

¶ 8 MRC finally argues that the issue of interest was not ripe for this Court's review. "A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 299 (1998) (quoting *Thomas* v. *Union Carbide Agric. Prod. Co.*, 473 U.S. 568, 581 (1985)); *see also Bank of Saipan, Inc. v. Atalig*, 2005 MP 3 ¶ 12 ("The ripeness doctrine prevents courts from deciding theoretical or abstract questions that do not yet have a concrete impact on the parties."). The trial court's award of post-judgment interest is not a theoretical question or a contingent future event—it is something that happened in the past that is currently impacting DLNR. Interest accruing on the debt is concretely affecting the government because its financial obligation to MRC is continuing to increase. Therefore, the issue is ripe because it is an issue that is actually affecting the government and not a contingent future event.[4]

2. The Court Properly Applied the Law to the Facts of the Case

A. Statutory law

¶ 9 As discussed in the Court's opinion, the payment of this judgment is governed by 1 CMC § 7207,[5] and this provision does not provide for post-judgment interest. Section 7207 clearly states that "[a]ny final judgment of a court shall be paid only pursuant to an item of appropriations . . . ." Furthermore, 7 CMC § 4101[6] does not make the government liable for post-judgment interest. *Brown v. State Highway Comm'n*, 476 P.2d 233, 234 (Kan. 1970) ("a statute which in general terms requires the payment of interest does not apply to the state or county unless it expressly so provides."). MRC

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[3] Furthermore, MRC failed to provide this Court with any authority explaining how a non-final judgment constitutes a property right subject to due process protection. While MRC's cited cases all concerned due process, none of them discussed judgments, and therefore, its argument fails on this ground as well because it did not specifically demonstrate to the Court how we overlooked or misapprehended this point of law. NMI Sup. Ct. R. 40(a)(2).

[4] MRC failed to provide the Court with any authority in support of its ripeness argument, and therefore, this contention fails to meet the requirements laid out in Supreme Court Rule 40(a)(2).

[5] 1 CMC § 7207. Court Orders:
Except for funds appropriated for settlements and awards, no court may require the disbursement of funds from the Commonwealth Treasury or order the reprogramming of funds in order to provide for such disbursement. Any final judgment of a court shall be paid only pursuant to an item of appropriations for settlements and awards.

[6] 7 CMC § 4101. Money Judgments:
Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered. The process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment, as provided in chapter 2 of this division (commencing with 7 CMC § 4201).

maintains that the government not being liable for interest under these statutes is irrelevant because the government is liable for interest on all of its debts pursuant to 1 CMC § 2553(k).[7] The question then, is whether the interest provision from section 2553(k) is applicable to judgments.

¶ 10 The Court has very few cases interpreting the application of section 2553(k), and none of them discuss whether the section applies to judgments. In *Tano Group, Inc. v. Department of Public Works*, 2009 MP 18 ¶ 52 (Slip Opinion, Dec. 31, 2009), the Court considered whether the Department of Public Works ("DPW") was liable to Tano Group for interest because of DPW's failure to pay Tano money due on a construction contract. The Court made clear that the contract between DPW and Tano explicitly provided for an award of post-judgment interest pursuant to 1 CMC § 2553(k). *Id.* Thus, *Tano* does not provide us with guidance because the contract between MRC and DLNR did not explicitly provide for an award of interest pursuant to section 2553(k). Likewise, *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 15, is not helpful because the Court's discussion of section 2553(k) only concerned what interest rate to apply—it did not discuss under what circumstances the statute was applicable. Thus, our cases discussing 1 CMC § 2553(k) are not helpful in answering the question before us.

¶ 11 MRC does not provide the Court with a specific interpretation of the statute that would entitle it to interest. Instead, it quotes the sentence from section 2253(k) that states: "[t]he unpaid balance of any indebtedness of the Commonwealth shall accrue interest equal to the amount set in 4 CMC 1817 on the unpaid balance until the indebtedness, plus interest, is paid in full." MRC argues that *Tano* supports its contention that section 2553(k) makes the government liable for post-judgment interest. As discussed above, *Tano* is not applicable because the contract between those parties explicitly provided for interest. 2009 MP 18 ¶ 52. Based on the quoted language, MRC seems to argue that its judgment constitutes a debt for the purposes of 1 CMC § 2553(k). The statute does not define "indebtedness," however, and the statute is ambiguous on its face as to whether it encompasses judgments. Therefore, we will examine the legislative history of section 2553(k), and our statutory scheme as a whole to determine whether a judgment is a debt for the purpose of section 2553(k). *See Faisao v. Tenorio*, 4 NMI 260, 266 (1995) ("This Court's objective, in interpreting statutes which reflect an ambiguity, is to ascertain and give effect to the intent of the legislature. In examining legislative history, congressional committee reports receive greater weight than less formal material such as floor debates.").

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[7] 1 CMC § 2553(k). Department of Finance: Duties and Responsibilities:
To promptly pay and disburse funds and payment for outstanding obligations, excluding tort obligations, owed by the Commonwealth to vendors, suppliers and other individuals whom the Commonwealth has a legal obligation to pay. The payment shall be authorized, or documented as to why payment cannot be authorized, no later than 30 days. The unpaid balance of any indebtedness of the Commonwealth shall accrue interest equal to the amount set in 4 CMC 1817 on the unpaid balance until the indebtedness, plus interest, is paid in full.

¶ 12 Turning to the Legislative history, we find that the statute was passed to ensure that the Department of Finance ("DOF") paid the Commonwealth's vendors and suppliers money that they were owed pursuant to already passed appropriations. Senate Standing Committee Report No. 7-102 at 2 (Oct. 24, 1991). The history does not mention anything about judgment debts. Based on the committee report, it was not the Senate's intent that section 2553(k) apply to judgments. This legislative intent is further supported by the location of the statute—as part of the chapter of the Commonwealth Code that specifies the duties and responsibilities of DOF. None of these sections of the Commonwealth Code discuss judgments, or the government being liable for post-judgment interest. Furthermore, pursuant to 1 CMC § 7207, only the Legislature can pay a judgment pursuant to an item of appropriation. This creates a distinction between judgment holders and vendors and suppliers. A vendor or supplier is providing the Commonwealth with goods and services pursuant to an already enacted spending bill. In other words, the Legislature has already agreed to pay those entities, and the purpose behind section 2553(k) was to ensure that the executive branch promptly paid the vendor or supplier pursuant to the appropriation. A judgment against the government, however, is not a sum of money that the government has already agreed to pay. It would be incongruous to apply section 2553(k) to judgments against the government, a sum of money that the Legislature has not consented to pay, when the purpose of the section was to ensure that DOF timely paid entities that possess a debt that the government already agreed to be liable for. Thus, based on the ambiguous language in the statute, its location in the Commonwealth Code, and the legislative history, 1 CMC § 2553(k) likely does not apply to judgments.

¶ 13 Any argument that the language of section 2553(k) could be applied to judgments is completely undercut by the rule that absent explicit consent, the government cannot waive its sovereign immunity and become liable for interest. *See Manglona v. Commonwealth*, 2005 MP 15 ¶ 43; *Pangelinan v. NMI Retirement Fund*, 2009 MP 12 ¶ 26; *United States v. North Carolina*, 136 U.S. 211, 216 (1890). In other words, 1 CMC § 2553(k) must explicitly apply to judgments in order for the government to be liable for post-judgment interest on a judgment. In *Manglona*, 2005 MP 15 ¶ 43, in discussing whether the Commonwealth was liable for prejudgment interest, the Court stated that "[w]here a sovereign government is a party and interest is not stipulated for by contract or authorized by statute, however, interest is not to be awarded against a sovereign government." In support of this rule, the Court cited the following language: "[the holding that] the state, unless by or pursuant to an explicit statute, is not liable for interest even on a sum certain which is overdue and unpaid . . . has been widely supported." *Id*. (citing *Fidalgo Island Packing Co. v. Phillips*, 147 F. Supp. 883, 886 (D. Alaska 1957), *amended by Fidalgo Island Packing Co. v. Phillips*, 149 F. Supp. 260 (D. Alaska 1957)). Thus, under *Manglona*, the government must explicitly agree to be liable for an award of interest, and section 2553(k)'s ambiguous applicability to judgments is insufficient to meet this requirement.

¶ 14 Similarly, in *Pangelinan v. NMI Retirement Fund*, 2009 MP 12 ¶ 26, the Court recognized that the Legislature waived the Retirement Fund's sovereign immunity by allowing it to sue or be sued, but that this waiver did not extend to allowing the Retirement Fund to be liable for interest on an award against it. The Court stated, "[w]hen the legislature opened the door for lawsuits against the Retirement Fund, it waived its immunity from damages, but in doing so did not also expressly waive the Fund's immunity from interest on those damages." *Id.* The Court further held that "since the legislature has not extended the scope of damages to include awards of interest against the Retirement Fund, and because the Retirement Fund has not contractually waived this protection, the trial court did not err in denying Pangelinan interest on his damages." *Id.* This reasoning is extremely persuasive. DLNR, similar to the Retirement Fund's ability to sue and be sued, explicitly agreed to arbitration and to have any arbitration award enforceable in the Commonwealth courts.[8] Further, DLNR, similar to the Retirement Fund, did not explicitly consent to be liable for interest on a damage award rendered against it. Thus, under the reasoning contained in *Pangelinan*, even if the government agrees to be sued, it must also explicitly agree to be liable for interest.

¶ 15 There is no statute that explicitly provides for the government being liable for post-judgment interest. Whether the language of 1 CMC § 2553(k) applies to judgments is at best ambiguous, but in light of *Manglona* and *Pangelinan*, there must be explicit statutory or contractual consent for the government to owe post-judgment interest. Therefore, since neither section 2553(k), nor any other statute, makes the government explicitly liable for interest on MRC's judgment, interest does not accrue.

B. The contract

¶ 16 In *Manglona*, 2005 MP 15 ¶ 43, the Court cited to *United States v. North Carolina*, 136 U.S. 211, 216 (1890), in adopting the well established rule that the government cannot be liable for interest absent its consent. In *North Carolina*, the Court stated that interest "is not to be awarded against a sovereign government, unless its consent to pay interest has been manifested by an act of its legislature, or by a lawful contract of its executive officers." 136 U.S. at 216. MRC admits that the contract it signed with DLNR does not provide for an award of post-judgment interest, but MRC nevertheless argues that the government impliedly consented to such an award. As discussed above, both *Manglona*, 2005 MP 15 ¶ 43 and *Pangelinan*, 2009 MP 12 ¶ 26, require the government to explicitly consent to liability for post-judgment interest. Since the contract did not provide for such a remedy, and there is no implicit consent to interest under Commonwealth law, the contract DLNR entered into with MRC does not make it liable for interest.

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[8] MRC is not, however, a sue and be sued government agency.

¶ 17 MRC makes one final argument, based on *Pangelinan*, 2009 MP 12 ¶ 29, that DLNR cast off the cloak of sovereignty and assumed the status of a private enterprise by entering into the contract with it. The Court stated in *Pangelinan* that:

> A sue-and-be-sued government agency that also engages in commercial activities does not per se "cast off the cloak of sovereignty" in regard to interest damages. Rather, the agency must "embark upon an essentially commercial venture which aspires to profitability" in order to subject itself to liability for interest damages without previously waiving such insulation.

Id. (citation omitted). This exception does not apply to DLNR because it is not a "sue or be sued" government agency. DLNR's contractual agreement with MRC that any dispute would be referred to arbitration, and that any award rendered against either party would be enforceable in the Commonwealth courts, does not change this status. DLNR is a non-autonomous agency of the sovereign that enjoys immunity; additionally, DLNR, unlike the Retirement Fund which possesses a degree of autonomy, is an executive agency under the complete control of the governor. *See id.* Finally, the commercial venture expectation is arguably dicta as the Court discussed this exception after it held that the Retirement Fund was not liable for interest. *Id*. ¶¶ 26, 29. Thus, the commercial venture exception *only* applies, if at all, to "sue and be sued" government agencies, and since DLNR is not such an agency, this exception does not apply.

III

¶ 18 For the foregoing reasons, this Court possesses the inherent authority to *sua sponte* raise and decide issues. Since the facts of this case are not in dispute, and the issue of whether the government is liable for post-judgment interest is purely a question of law, we properly *sua sponte* raised the issue. We also did not misapply the law to the facts of this case. Neither the contract entered into by DLNR and MRC nor any applicable statute provides for post-judgment interest on this judgment. Additionally, the government cannot become implicitly liable for interest—it must expressly consent to such an award. Therefore, we DENY the petition for rehearing.

SO ORDERED this 23rd day of February, 2011.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

_/s/___________________________________
HERBERT D. SOLL
Justice Pro Tem