

BANK OF GUAM
vs.
Raphael D.L.G. DEMAPAN, et
al.

for time spent addressing the issue.
District Court Rule App. P. 18.

Appellate No. 85-9012
Civil Action No. 84-240
District Court NMI
Appellate Division

Decided February 2, 1987

**1. Statutes - Construction -
Plain Meaning**

The meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms.

**2. Statutes - Construction -
Plain Meaning**

A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.

3. Usury - Recovery of Interest

Trial court's ruling that usury statute allowed lender to recover only one percent per month interest, with any payment in excess of that figure to be applied directly to principal, reflected clear, rational and consistent construction of statute. 4 CMC §5301 et seq.

**4. Appellate Procedure -Attorney
Fees and Costs**

Where party raised issue for first time on appeal and claim was frivolous, opposing party is entitled to costs and attorney fees

FILED
Clerk
District Court

UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS FEB 02 1987

APPELLATE DIVISION

For The Northern Mariana Islands

By *Joaquin C. Arriola*
(Attorney at Law)

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4 BANK OF GUAM,)
5 Plaintiff-Appellant,)
6 vs.)
7 RAPHAEL DLG. DEMAPAN, et al.,)
8 Defendant-Appellees.)

DCA NO. 85-9012
CTC NO. 84-240

OPINION

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10 Attorney for Appellant: JOAQUIN C. ARRIOLA
Arriola, Cowan & Bordallo
P. O. Box X
11 Agana, Guam 96910

12 Attorney for Appellees: MARYBETH HERALD
Fitzgerald, Herald & Bergsma
13 P. O. Box 909
Saipan, CM 96950

14 BEFORE: LAURETA, KELLER*, District Judges, and MUNSON**
15 MUNSON, Judge:

PROCEDURAL HISTORY

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18 On June 5, 1984, plaintiff-appellant Bank of Guam filed
19 a complaint to foreclose a mortgage on real property. Trial was
20 held April 25, 1986, and a Memorandum Opinion was issued the next
21 day. The Bank appeals the trial court's decision concerning the
22 balance due and the allowable rate of interest.

23
24 * The Honorable William D. Keller, United States District Judge,
Central District of California, sitting by designation.

25 ** The Honorable Alex R. Munson, Chief Justice, Trust Territory
26 High Court, sitting pursuant to 48 U.S.C. §1694b.

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FACTS

Appellees on June 25, 1982, executed and delivered to appellant a \$32,000 promissory note, secured by a mortgage on real property. After default by appellees, appellant sued to recover money damages, for judgment and execution on the real property, and to foreclose appellees' redemption rights.

By the terms of the note appellees were obligated to pay interest at the rate of eighteen percent per year. The trial court ruled that 4 Commonwealth Code (C.M.C.) §5301 allowed plaintiff-appellant to recover only one percent per month interest, with any payment in excess of that figure to be applied directly to principal, as per 4 C.M.C. §5302. From this determination the Bank appealed.

ISSUES

1. Whether the trial court properly construed 4 C.M.C. §§5301 and 5302 to require that interest paid in excess of one percent per month be credited to the principal balance due.
2. Whether the question of preemption by federal statute of 4 C.M.C §§5301-5303 can be raised for the first time on appeal.

ANALYSIS

1. Whether the trial court properly construed 4 C.M.C §§5301 and 5302 to require that interest paid in excess of one percent per month be credited to the principal balance due.

1 The trial court expressly recognized that it was faced
2 for the first time with the proper construction to be given 4
3 C.M.C. §§5301-5303. The usury statutes in the Commonwealth are,
4 in their entirety, as follows:

5 §5301. Action to Recover Usurious
6 Amounts.

7 No action shall be maintained in any
8 court of the Commonwealth to recover a higher
9 rate of interest than 2 percent per month on
10 the balance due upon any contract made in the
11 Commonwealth on or after February 15, 1965
involving a principal sum of \$300 or less,
nor to recover a higher rate of interest than
1 percent per month on the balance due on any
such contract involving a principal sum of
over \$300.

12 §5302. Crediting of Usurious Interest
13 to Principal.

14 Payments of money or property made by
15 way of usurious interest, whether made in
16 advance or not, as to the excess of interest
17 above the rate allowed by law at the time of
18 making the contract, shall be taken to be
payments made on account of principal, and
judgment shall be rendered for no more than
the balance found due, after deducting the
excess of interest so paid.

19 §5303. Prohibited Transactions.

20 Any person who directly or indirectly
21 receives any interest, discount, or
22 consideration for or upon the loan or
23 forbearance to enforce the payment of money,
24 goods and things in action, greater than 2
percent per month shall be guilty of usury,
and upon conviction thereof shall be
imprisoned for a period of not more than six
months, or fined not more than \$100, or both.

25 Appellant has a judgment for \$32,000, plus interest at
26 one percent per month from the date of the loan. It here seeks

1 to retain the interest in excess of the one percent per month
2 allowed by law, which was paid by appellees prior to default.
3 Appellant appears to concede it is entitled only to interest at
4 one percent per month on the still-remaining balance. Appellant
5 argues that §5302 comes into play only if there first is found to
6 be a violation of §5303, which makes it a misdemeanor to charge
7 interest of more than two percent per month. Appellant maintains
8 that §5301 has as its sole intention and effect the prohibiting
9 of use of the courts to collect interest greater than one percent
10 per month. Non-judicial remedies remain available. To accept
11 this argument means the trial court erred in reading §5302 in
12 conjunction with §5301.

13 [1-3] The Commonwealth of the Northern Mariana Islands is
14 self-governing. CNMI v. Atalig, 723 F.2d 682, 687 (9th Cir.
15 1984). The power to enact laws is vested in the CNMI
16 Legislature. Constitution of the Commonwealth of the Northern
17 Mariana Islands, Art. II, §1. The meaning of a statute must, in
18 the first instance, be sought in the language in which the act is
19 framed, and if that is plain, and if the law is within the
20 constitutional authority of the law-making body which passed it,
21 the sole function of the courts is to enforce it according to its
22 terms. Caminetti v. United States, 242 U.S. 470, 485 (1917). A
23 fundamental canon of statutory construction is that, unless
24 otherwise defined, words will be interpreted as taking their
25 ordinary, contemporary, common meaning. Perrin v. United States,
26 444 U.S. 37, 42 (1979). A simple reading of these three

1 sections, in order, renders appellant's argument extremely
2 difficult to accept. They present a clear, rational, consistent
3 statutory scheme. To reach appellant's conclusion requires
4 reading the statute backwards and combining a clearly penal
5 section, §5303, with an obviously civil one, §5302. Further
6 inquiry is neither necessary nor warranted.

7 Appellant relies on Kingzio v. Bank of Hawaii, 7 Trust
8 Territory Reports (T.T.R.) 343 (1975), to support its argument
9 that §5301 does not prohibit interest rates in excess of one
10 percent per month, it merely limits recovery at suit. That is,
11 the statute prohibits the court from enforcing contracts for more
12 than the statutory rate. Kingzio interpreted 33 Trust Territory
13 Code §251. (Sections 251, 252, and 253 of the Trust Territory
14 Code have been codified essentially unchanged as 4 C.M.C.
15 §§5301-5303). Appellant's reliance is misplaced. Kingzio
16 involved borrowers who sued their lending bank to recover all
17 interest they had paid on loans, on the ground that the bank's
18 interest rate was usurious. The Kingzio court held that the
19 common law right to sue or recover usurious interest exists only
20 if it is declared illegal to collect excess interest or the
21 statute provides that a contract with a usurious interest rate is
22 void in whole or in part. The common law remedy did not exist
23 because the statute provided that the court could not aid a
24 party's attempt to enforce a contract with an interest rate
25 higher than the legal limits.

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1 More important, though, is that the trial court^{1/} in the
2 instant matter expressly found Kingzio of no assistance because
3 Kingzio dealt with a suit by borrowers seeking to recover all
4 interest paid on usurious contracts. Here, the lender brought
5 suit and borrowers sought a credit only for their interest
6 payments in excess of the one percent per month allowed by law.
7 The Kingzio court interpreted 33 T.T.C. §251 (4 C.M.C. §5301)
8 correctly to preclude recovery of excess interest when a creditor
9 attempts to collect in court.

10 Appellant's proffered interpretation of these sections
11 is not persuasive.

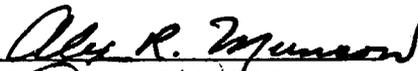
- 12 2. Whether the question of preemption by
13 federal statute of 4 C.M.C §§5301-5303
14 can be raised for the first time on
15 appeal.

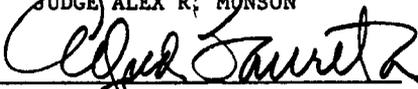
16 Preemption was not raised at trial. Appellant did not
17 concede until oral argument that the factual record from the
18 trial court could not sustain even a preliminary inquiry into the
19 claim of preemption. Accordingly, appellant withdrew this issue
20 from our consideration. Appellees' request for attorney fees
21 will be addressed below.

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25 ^{1/} It should be noted that the trial judge here took part in
26 the Kingzio decision while an Associate Justice of the Trust
Territory High Court.

1 For the reasons stated above, the decision of the trial
2 court is AFFIRMED.

3 [4] Finally, appellees ask for an award of court costs and
4 attorney fees on appeal for defending the preemption issue, which
5 they claim was without merit and the result of which was obvious.
6 Appellate Rule 18 of this Court allows an award of single or
7 double costs in an appeal deemed frivolous. The fact that
8 appellant, at oral argument, withdrew the preemption issue from
9 our consideration is of no consequence to this determination.
10 Appellant's decision does not alter the fact that both appellees
11 and this Court were required to spend time addressing the issue.
12 We are not prevented from considering, in light of Rule 18,
13 whether or not the claim was frivolous. The preemption claim
14 clearly was frivolous. Appellees are awarded court costs and
15 attorney fees on appeal for this issue only. Counsel for
16 appellee shall prepare and submit for consideration an affidavit
17 documenting court costs and attorney fees in regard to this
18 issue.

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22 JUDGE ALEX R. MUNSON

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24 JUDGE ALFRED LAURETA

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26 JUDGE WILLIAM D. KELLER