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4 **IN THE SUPERIOR COURT**
5 **FOR THE**
6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **BANK OF SAIPAN,**

7 **Plaintiff,**

8 **v.**

9 **NOIME B. LIFOIFOI and**
10 **ALLAN AGUON LIFOIFOI,**

11 **Defendants.**

CIVIL ACTION NO. 21-0091

**ORDER GRANTING PLAINTIFF
 BANK OF SAIPAN'S MOTION FOR
 SUMMARY JUDGMENT FOR
 PAYMENT OF LATE CHARGES,
 UNPAID INTEREST, AND PRINCIPAL
 AMOUNT BECAUSE DEFENDANT
 ALLAN AGUON LIFOIFOI'S
 FIFTEEN-YEAR PRISON SENTENCE
 WAS A FORESEEABLE
 CONSEQUENCE OF HIS CRIME**

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14 **I. INTRODUCTION**

15 **THIS MATTER** came before the Court on September 5, 2023, at 2:30 p.m., in
16 Courtroom 220A for a hearing on Bank of Saipan's ("Plaintiff Bank of Saipan") Motion for
17 Summary Judgment. Michael A. White, Esq. appeared for Plaintiff, and Joseph E. Horey, Esq.
18 appeared for Allan Aguon Lifoifoi ("Defendant Allan or "Allan"). Noime B. Lifoifoi did not
19 appear.
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21 **II. FACTUAL BACKGROUND**

- 22
- 23 1. On July 10, 2018, Allan and his wife Noime borrowed \$13,000.00 from Plaintiff Bank
 - 24 of Saipan.
 - 25 2. Defendants Allan and his wife Noime B. Lifoifoi agreed to repay the loan with
 - 26 monthly payments of \$361.99.
 3. The loan provided for 15% interest per annum.

By order of the Court, Judge Joseph N. Camacho

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- 4. On June 11, 2020, Allan was arrested and charged with sexual abuse of a minor. Defendant Allan has been incarcerated since then. After pleading guilty, he was convicted and sentenced to fifteen years’ imprisonment, and the sentence will conclude on June 11, 2035.
- 5. Among other conditions, Allan is not permitted to work. His sentence specifically provides that it is “without the possibility of parole, early release, work release or furlough.” See *Commonwealth v. Lifoifoi*, Crim. No. 20-0088, Judgment and Commitment Order (November 5, 2020) at 4 ¶ 1. See also NMIAC § 57-20.1-1730 (“Any prisoner incarcerated for a crime which involved . . . sexual contact . . . shall not be eligible for work release, educational leave or furlough under any conditions.”).
- 6. Defendants Allan and Noime B. Lifoifoi paid a total of \$4,493.79 toward the loan. The last payment was made on September 24, 2020.
- 7. Initially Defendant Allan disputed the amount owed to Bank of Saipan and the 15% interest rate computed by Plaintiff.

III. PROCEDURAL HISTORY

- 8. On March 29, 2021, Plaintiff Bank of Saipan filed this action.
- 9. On April 29, 2021 Defendants Allan and Noime B. Lifoifoi were served the complaint.
- 10. On May 24, 2021, Defendant Allan filed an Answer.
- 11. On October 23, 2021, an Entry of Default was issued in favor of Plaintiff Bank of Saipan and against Noime B. Lifoifoi.
- 12. On October 23, 2021, a Default Judgment was issued in favor of Plaintiff Bank of Saipan and against Noime B. Lifoifoi¹.

¹ As of the issuance of this order there is nothing in the file that Plaintiff Bank of Saipan has made collection attempts on the Default Judgment against Defendant Noime B. Lifoifoi.

1 13. On April 25, 2022, Defendant Allan filed a Motion for Order to Show Cause or
2 Referral to Mediation. Plaintiff Bank of Saipan and Defendant Allan were not able to
3 reach a settlement.

4 14. On June 27, 2023, Plaintiff Bank of Saipan filed a Motion for Summary Judgment.

5 15. On August 18, 2023, Defendant Allan filed an Opposition to the Motion for Summary
6 Judgment.

7 16. On August 28, 2023, Plaintiff Bank of Saipan responded with a Reply.

8 17. On November 27, 2023, the Court issued an order titled Request for Parties to Submit
9 Updated Calculations of the Applicable Interest Rate.

10 18. On December 18, 2023, Plaintiff Bank of Saipan filed a Response to the November
11 27, 2023 Order.

12 19. On January 5, 2024, Defendant Allan filed a Response to Plaintiff's Computations.

13 20. On January 10, 2024, Plaintiff Bank of Saipan filed a Reply.

14 21. On January 16, 2024, the Court held a hearing on the updated calculations. Based on
15 the filing and representation by Defendant Allan, there is no dispute of the calculated
16 principal sum of \$11,928.25 that Defendant Allan owes Plaintiff Bank of Saipan.
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19 **IV. LEGAL STANDARD**

20 **Summary Judgment**

21 The court must grant summary judgment if the moving party shows there is no genuine
22 dispute to any material fact, and the moving party is entitled to judgment as a matter of law.
23 NMI R. Civ. P. Rule 56(a). The moving party must identify each part of the claim on which
24 summary judgment is sought. Id. If the moving party will bear the ultimate burden of
25 persuasion at trial, then the movant "can only meet its burden on summary judgment by
26 presenting affirmative evidence showing the absence of a genuine issue of material fact —

1 that is, facts that would entitle it to a directed verdict if not controverted at trial.” *Parrott v.*
2 *PNC Bank*, 986 F. Supp. 2d 1263, 1267 (N.D. Ala. 2013). “Where the evidentiary matter in
3 support of the motion is insufficient, summary judgment must be denied even if no opposing
4 evidentiary matter is presented.” *Id.* (emphasis in original) (quoting *Adickes v. S. H. Kress &*
5 *Co.*, 398 U.S. 144, 159-60 (1970)).

7 V. DISCUSSION

8 Defendants Allan and Noime B. Lifoifoi received a loan for \$13,000 from the Bank of
9 Saipan on July 10, 2018. The Defendants defaulted on those payments. Since June 11, 2020,
10 Defendant Allan stopped making payments due to being incarcerated. Noime B. Lifoifoi
11 stopped making payments on September 24, 2020, and an Entry of Default and Default
12 Judgment has since been entered against her.

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14 Plaintiff Bank of Saipan has requested the arrears and future payments from Defendant
15 Allan. Defendant Allan argues that based on temporary impracticability, he cannot continue
16 payments while incarcerated because his sentencing does not allow for work release.
17 Defendant Allan argues it is only temporary since his sentence is for fifteen years. Defendant
18 Allan asserts that interest on the loan should be paused or tolled until the end of his sentence
19 when he is released and able to pay the loan payments.

21 **Temporary Impracticability**

22 In Defendant Allan’s sentencing order, it states that he is ineligible for work release.
23 *Commonwealth of the Northern Mariana Islands v. Allan Aguon Lifoifoi*, Criminal Case No.
24 20-0088, (NMI Super. Ct. Nov 5, 2020) (Judgment of Conviction and Commitment Order at
25 4) (Naraja, PJ). Defendant Allan pled guilty to two counts of sexual abuse of a minor and was
26 sentenced to fifteen years imprisonment. Defendant Allan argues that the sentencing order

1 prevents him from continuing his duty to perform and has made it impracticable to make
2 payments while incarcerated. “The doctrine of impossibility of performance provides that if a
3 party’s performance is rendered ‘impracticable **without his fault** by the occurrence of an
4 event the non-occurrence of which was a basic assumption on which the contract was made,
5 his duty to render that performance is discharged.” *Store SPE LA Fitness v. Fitness Int’l,*
6 *LLC*, 2021 U.S. Dist. LEXIS 141913 (citing Restatement (Second) of Contracts §261).
7 (emphasis in bold). Specifically, Defendant Allan’s ineligibility for work release is the
8 impracticability not that he committed a crime. It is the sentencing order prohibiting his ability
9 to make money to pay the loan every month. Plaintiff Bank of Saipan disagrees stating
10 Defendant Allan caused his imprisonment so it was his fault, rendering impossibility or
11 impracticability inapplicable. Reply to Opposition to Motion for Summary Judgment at 1-2.
12 There is also no evidence showing that the contracting parties assumed that this would or
13 would not occur. *Id.*

15 However, Defendant Allan argues that the impracticability is temporary until June 11,
16 2035, when Defendant Allan is released. Opposition to Motion for Summary Judgment at 2.
17 “Impracticability of performance or frustration of purpose that is only temporary suspends the
18 obligor’s duty to perform while the impracticability or frustration exists but does not discharge
19 his duty or prevent it from arising[.]” Restatement (Second) of Contracts § 269. Defendant
20 Allan claims that finding fault is not applicable for temporary impracticability. Defendant
21 Allan states that his prison sentence is temporary, but fifteen years is a considerable amount
22 of time for the Plaintiff Bank of Saipan to wait for Defendant Allan’s payments. Temporary
23 alludes to a short period. Black’s Law Dictionary defines temporary as “lasting for a time
24 only; existing or continuing for a limited (usu. short) time; transitory.” Black's Law Dictionary
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1 (7th ed. 1999).² “Courts have uniformly refused to find impossibility where the difficulty has
2 been caused by the promisor or where the difficulty was preventable by the promisor.” *Taylor-*
3 *Edwards Warehouse & Transfer Co. v. Burlington Northern, Inc.*, 715 F.2d 1330, 1336
4 (1983). Defendant Allan created the impracticability by his actions, preventing him from
5 continuing his duty to perform. Defendant Allan created the situation that he now claims is
6 preventing him from fulfilling his obligation to make payments on the loan. See, *Gulf, Mobile*
7 *and Ohio Railroad Co. v. Illinois Central Railroad Co.*, 128 F. Supp. 311, 324 (N.D. Ala.
8 1954). Defendant Allan has not provided statute or caselaw stating that interest be paused or
9 tolled on the loan while a person is incarcerated. Defendant Allan argues that his current
10 situation was not foreseeable at the time of contracting. “The ultimate inquiry for purposes
11 of the impossibility defense is whether the intervening changes of circumstance were so
12 unforeseeable that the risk of increased difficulty or expense should not properly be borne by
13 the promisor.” *Mull v. Motion Picture Indus. Health Plan*, 41 F.4th 1120, 1131 (citing *Taylor-*
14 *Edwards Warehouse & Transfer Co. v. Burlington N., Inc.*, 715 F.2d 1330, 1336 (9th Cir.
15 1983)). By committing a crime, a person knows or should know that a possible consequence
16 of being found guilty or pleading guilty to a crime is imprisonment. It was not unforeseeable
17 at the time of contracting and it was not unforeseeable when Defendant Allan pled guilty. As
18 Plaintiff Bank of Saipan noted, there is no evidence showing the non-occurrence of Defendant
19 Allan going to prison was a basic assumption of the contract. “The mere fact that a contract's
20 performance becomes more difficult or expensive than originally anticipated, does not justify
21 setting it aside.” *Liner v. Armstrong Homes*, 19 Wash.App. 921, 926 (1978) (citing *Westland*
22 *Constr. Co., Inc. v. Chris Berg, Inc.*, 35 Wn.2d 824, (1950)).

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² “Impossibility, impracticability and frustration of purpose are, as a practical matter, variations on the same theme and often treated interchangeably by courts.” Impossibility, Impracticability and Frustration of Purpose in the Age of COVID-19 (americanbar.org); See also Restatement (Second) of Contracts, § 261, *comment d*.

1 Defendant also argues that allowing the accrual of interest during the fifteen-year
2 prison sentence would be a monetary penalty for his offense. Opposition to Motion for
3 Summary Judgment at 3. Here, the Court is not penalizing Defendant Allan nor is Plaintiff
4 Bank of Saipan penalizing Defendant. By signing the Note and Security Agreement,
5 Defendant Allan promised to pay the loan amounts based on the payment schedule, including
6 any late charges, and any interest on the unpaid balances. Plaintiff Bank of Saipan expected
7 Defendant Allan to make his payments diligently or suffer late charges and interest on unpaid
8 balances. Defendant Allan likewise signed and agreed. Defendant Allan's non-payment
9 would have resulted in late charges and interest on any unpaid balances whether he became
10 unemployed, went to prison, or simply refused to make payments.
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12 Based on the filings and representation by Defendant Allan, there is no dispute of the
13 calculated principal sum of \$11,928.25 that Defendant Allan owes Plaintiff Bank of Saipan.
14 There is no genuine dispute of a material fact. The central question revolves around whether
15 the Plaintiff has a legal entitlement. While Restatement (Second) of Contracts § 269 does not
16 include finding fault, an impracticability within itself alludes to a supervening event
17 preventing the injured party from performing an obligation. As stated before, Defendant
18 Allan's imprisonment was not unforeseen. In addition to pleading guilty, the act of committing
19 a crime inherently carries the risk of being convicted and subsequently sentenced to
20 imprisonment, which entails certain restrictions such as the prohibition of work release.
21 Although Defendant Allan's imprisonment is not permanent, a duration of fifteen years is not
22 conducive to considering it as "temporary" to exempt him from fulfilling his obligation. The
23 Court finds that Defendant Allan's imprisonment and inability to work during his
24 imprisonment is not a temporary impracticability. Defendant Allan's obligation to pay which
25 includes late charges, unpaid interest, and the principal sum under the Note and Security
26 Agreement is not suspended.

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VI. CONCLUSION

Because Defendant Allan Aguon Lifoifoi's fifteen-year prison sentence was a foreseeable consequence of his crime, his obligation to pay late charges, unpaid interest, and the principal sum under the Note and Security Agreement is not suspended. **THEREFORE**, Plaintiff Bank of Saipan's Motion for Summary Judgment is **GRANTED**.

SO ORDERED this 23rd day of January, 2024.

/s/
JOSEPH N. CAMACHO, Associate Judge