



E-FILED
CNMI SUPREME COURT
E-filed: Dec 13 2006 4:27PM
Clerk Review: Dec 13 2006 4:32PM
Filing ID: 13178288
Case No.: CV-05-0014-GA
Kenneth Barden

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

NORTHERN MARIANAS HOUSING CORPORATION,
Plaintiff/Appellant,

v.

DONALD T. FLORES and SHIRLINA DLG. FLORES,
Defendants/Appellees.

Supreme Court Appeal No. 05-0014-GA
Superior Court Case No. 02-0397B

OPINION

Cite as: *Northern Marianas Housing Corp. v Flores, 2006 MP 23*

Submitted on the Briefs on September 20, 2006
Saipan, Northern Mariana Islands

Attorney for Appellant:
Michael A. White, Esq.
Attorney at Law
P.O. Box 505222
Saipan, MP 96950

Attorney for Appellees:
Joseph Aldan Arriola, Esq.
Law Office of Joseph A. Arriola
P.O. Box 505080
Saipan, MP 96950

FOR PUBLICATION

BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; ALEXANDRO C. CASTRO, *Associate Justice*; and JOHN A. MANGLONA, *Associate Justice*

DEMAPAN, Chief Justice:

¶1 Appellant challenges a trial court order that attorney fees and costs awarded pursuant to 2 CMC § 4537 are not subject to the Commonwealth’s statutory nine percent interest rate on money judgments. We hold that attorney fees and costs constitute part of the judgment, and that all money judgments must bear interest from the point in time at which liability is determined. On that basis, we REVERSE.

I. Background

¶2 Donald T. Flores and Shirlina Dlg. Flores entered into a mortgage agreement with the Northern Mariana Housing Corporation (“NMHC”) to secure a home loan. They defaulted and NMHC brought a foreclosure action against them. The trial court granted judgment for NMHC, but refused to apply the statutory interest rate to that part of the damages award representing NMHC’s attorney fees and costs. Despite the trial court’s recognition that 7 CMC §4101 requires “[e]very judgment for the payment of money [to] bear interest at the rate of nine percent a year from the date it is entered,” the court disagreed with NMHC’s assertion that fees and costs constituted part of the judgment:

The underlying concern of this Court is fairness. In fairness to the parties involved in civil judgments, this Court cannot sanction attaching interest at the outset on attorney’s fees and court costs. Although there could be other situations which could warrant including attorney’s fees as part of a judgment which accrues interest, this is not one of those situations.

Northern Marianas Housing Corporation, v. Donald T. Flores and Shirlina Dlg. Flores, Civ. No. 02-0397 (N.M.I. Super. Ct. May 16, 2005)([Unpublished] Opinion at 1-2).

¶3 NMHC now appeals the trial court’s decision that attorney fees and court costs are not part of the “judgment” subject to a nine percent interest rate.

II. Discussion

¶4 This appeal requires us to consider the trial court’s interpretation and application of two Commonwealth statutes. We review statutes *de novo*. *Northern Marianas College v. Civil Serv. Comm’n*, 2006 MP 4 ¶ 6. NMHC brought this action pursuant to 2 CMC §4537, entitled “Actions for Foreclosure of Mortgages.” Subsection (d) of that statute reads:

Trial and Judgment. If, upon trial in the action, the court finds the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest, costs, and attorney’s fees, and shall render judgment for the sum so found due

¶5 The plain language of this section clearly envisions attorney fees and costs to be included in the judgment. Attorney fees and costs are “include[ed]” in the “amount due to the plaintiff,” which in turn constitutes the judgment. The language permits no other reading. Similarly, 7 CMC §4101 is unambiguous when it states “[e]very judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered.” The statute lists no exceptions. The trial court was in error to carve one out. Although we sympathize with the trial court’s concern for fairness, empathy does not trump legislation. It is the job of the legislature, not the courts, to move from the former to the latter.

¶6 We base our decision solely on the statutory language, yet sound policy also dictates this outcome. Charging interest on money judgments is not simply a punitive measure designed to deter untimely payment; it is primarily a financial consideration in

line with economic reality. Borrowed money is not free. Neither should damages, attorney fees, or other costs be free from interest since full compensation must account for the loss of the benefit of such monies until the time they are paid. See *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827, 835-36, 110 S.Ct. 1570, 1576, 108 L.Ed.2d 842 (1990) (“the purpose of postjudgment interest is to compensate the successful plaintiff for being deprived of compensation for the loss from the time between the ascertainment of the damage and the payment by the defendant.”) (citation omitted). To this end we agree with the Ninth Circuit’s statement that “there exists no real distinction between judgments for attorneys’ fees and judgments for other items of damages. . . . [O]nce a judgment is obtained, interest thereon is mandatory without regard to the elements of which that judgment is composed.” *Perkins v. Standard Oil Company of California*, 487 F.2d 672, 675 (1973).

¶7

7 CMC §4101 makes clear that interest begins to run from the date the judgment is entered. However, in the present case there are two court orders which might be considered judgments for the purpose of this statute. The first is the judgment which granted NMHC damages for the Flores’ default and quantified all damages other than the attorney fees and costs. The second judgment quantified those fees and costs. The question arises as to which judgment initiates the accrual of interest on the attorney fees and costs award; the first judgment which determined liability, or the second judgment which affixed the amount? We conclude that the judgment determining liability is the judgment from which interest begins accruing for all components of the judgment, regardless of whether some or all of those components are not quantified at that point. Our reasoning for this is similar to that above; that a plaintiff should be compensated for

the loss of the benefit of her money damages prior to their payment. Once liability is established, a plaintiff's right to damages attaches along with the right to interest on such damages.

¶8 We note that federal courts interpreting their similarly worded interest statute are split as to when interest begins accruing. However, the majority of circuits find adjudication of liability as the appropriate trigger. *See Associated General Contractors of Ohio, Inc. v. Drabik*, 250 F.3d 482 (2001) (reviewing the case law and noting the majority of circuits view interest on attorney fees awards to run from the time the party's right to them is established, even if their amount is uncertain). We find the majority reasoning persuasive. Interest on damage awards, regardless of what those damages purport to remedy, begins to run from the time the trial court enters a judgment establishing a party's right to such damages. We have considered the counter argument that a damages award which has not been quantified prevents a defendant from avoiding interest through immediate payment. However, we believe that between the two parties, the burden of loss should fall on that party who created the situation giving rise to damages. Further, we believe that such loss is mitigated in whole or in part by the benefit the at-fault party enjoys by retaining control of the money until the time the judgment is satisfied. *See id.* at 495.

III. Conclusion

¶9 After reviewing the relevant statutes, arguments of counsel, and other authorities, we conclude that 7 CMC §4101 requires all money judgments to bear interest regardless of the reason precipitating the judgment. Even absent 2 CMC §4537's clear language that attorney fees and costs are elements of any judgment entered pursuant to a mortgage

foreclosure, attorney fees and costs, if awarded, would be included for purposes of interest by virtue of the policy concerns supporting statutory interest. Further, such interest begins to run from the date the judgment establishing liability is entered, even if quantifying the actual damage amount occurs by way of a subsequent judgment. We also note that nothing in our decision otherwise limits the trial court's discretion to set or adjust a damages award, including attorney fees, as it sees fit.

¶10 Based on the foregoing, we REVERSE the trial court and order that the judgment of \$1,102.50 for attorney fees and \$90.21 for costs bear the statutory interest rate of nine percent, to be calculated from August 18, 2005, the date of the judgment establishing liability.

DATED this 13th day of DECEMBER, 2006.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
JOHN A. MANGLONA
Associate Justice