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

ESTATE OF VICENTE S. MUNA, Deceased,
by and through LARRY T. LACY, Administrator,
Plaintiff-Appellant,

v.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Defendant-Appellee.

SUPREME COURT NO. CV-05-0001-GA
SUPERIOR COURT NO. 96-0769

Cite as: 2007 MP 16

Decided August 14, 2007

Brien Sers Nicholas, Saipan, Commonwealth of the Northern Mariana Islands, for Plaintiff-Appellant.
Jeanne H. Rayphand, Assistant Attorney General, Commonwealth Attorney General's Office, for Defendant-Appellee.

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

DEMAPAN, C.J.:

¶ 1 Plaintiff-Appellant Estate of Vicente S. Muna[1] appeals the trial court's grant of summary judgment in favor of Defendant-Appellee Commonwealth of the Northern Mariana Islands (the "Government") in this inverse condemnation proceeding. Muna argues that the trial court erroneously granted the Government's motion for summary judgment on two grounds: that Muna's failure to respond to the request for admissions should not have bound Muna to any facts because the admissions called for a legal conclusion, and the trial court made an erroneous finding that the date of the taking was April 1, 1976. In addition, Muna argues that the trial court erroneously held that the rate of interest to be awarded was six percent instead of fifteen percent under 4 CMC § 1817. We AFFIRM the trial court's grant of summary judgment, REVERSE the legal analysis used to determine the interest rate, and REMAND for the trial court to make a factual finding as to the final judgment amount.

I

¶ 2 The procedural history of this inverse condemnation proceeding dates back to at least 1971 and involves land taken from Muna before the end of World War II. This is the second time this case is before us. The first was an appeal from a court order determining that a March 15, 1991, Land Commission decision was binding on the parties and that Muna was the pre-war owner of Saipan lots 448 and 448-1, containing an area of 6,277.6 square meters. The Government argued that the administrative determination was invalid and the statute of limitations ran on the claim. We affirmed the previous trial court order on February 14, 2000, and enabled Muna to proceed with his claim. *Estate of Muna v. Commonwealth*, 2000 MP 2 ¶ 15.

¶ 3 Muna then filed a third amended complaint with the trial court and the Government served discovery requests. The Government made a request for admissions to which Muna did not respond.[2] Both parties moved for summary judgment. By an order dated December 4, 2003

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[1] For ease of reading on appeal, the Estate of Vicente S. Muna is referred to as "Muna." We also use the term "Muna" interchangeably with the individual, Vicente S. Muna.

[2] While counsel for Muna obtained extensions of time for the interrogatories and production of documents, he did not get an extension for the requests for admission. The assistant attorney general handling the motion for summary judgment below stated that counsel for Muna conceded that each request was deemed admitted and agreed his client would not file a late response to the outstanding requests for admission. Muna never filed a response to the request for admission. In Muna's opposition papers below, counsel did not challenge the Government's assertion that he failed to respond to the admissions and that each request was deemed admitted. Instead, he made a legal argument that the Government could not have established by admission that the property was taken on April 1, 1976, because it was not until March 15,

(the current "Appealed Order"), the trial court granted the Government's motion for summary judgment. Proceeding under Com. R. Civ. P. 36(a), the trial court held that the following facts were conclusively established: (1) lots 448 and 448-1 containing an area of 6,277.6 square meters should be deemed to have been taken in 1976; (2) the Commonwealth is responsible for compensating plaintiff for the fair market value of the land in 1976; and (3) the market value for lots 448 and 448-1 containing an area of 6,277.6 square meters in 1976 is less than $7 per square meter. The trial court additionally found that because there was no existing interest rate provision set forth by statute covering this particular type of judgment, the rate would be set at six percent, which happened to be a number between the provision of nine percent under the Uniform Commercial Code ─ Bank Deposits and Collections, 7 CMC § 4101 *et seq.*, for money judgments and three percent which applies to the analogous situation of eminent domain under 1 CMC § 9227(b).

¶ 4 Muna then brought a motion for reconsideration which was denied for failure to raise any new facts, law, or arguments. Six months later, Muna filed an At Issue Memorandum and the trial court scheduled the case for a pre-trial conference and bench trial by order dated October 14, 2004. The Government filed a motion to vacate the October 2004 order on the grounds that the Appealed Order already decided all matters. In opposition, Muna argued that the exact location of lots 448 and 448-1 remained at issue. The trial court denied the Government's motion to vacate the pre-trial conference and bench trial schedule. The trial court found that while the lot numbers and size of the lots had been determined, the actual location had not been determined and therefore an unresolved dispute remained.

¶ 5 The parties, following the denial of the Government's motion to vacate, stipulated to the location of lots 448 and 448-1 and the trial court then vacated the trial. Both sides preserved their arguments relating to whether the notice of appeal was timely filed. On January 4, 2005, Muna filed a notice of appeal from the December 4, 2003, summary judgment order. The Government also filed a motion to dismiss the appeal, which we hereby deny.[3]

1991, that Muna was determined to be the owner of the properties. Muna never moved for relief under Com. R. Civ. P. 36(b) for the court to permit withdrawal or amendment of the admissions.

[3] Our jurisdiction extends only to final orders. NMI Const. art. IV, § 3. We generally do not review interlocutory orders. *Ishimatsu v. Royal Crown Ins. Corp.*, 2006 MP 9 ¶ 7. "[A]ppeals from interlocutory orders are exceptional in character and are wholly dependent upon *statute;* therefore, the fundamental rule requiring finality of decision as a basis for appeal must be followed unless an *express authorization* for a different procedure can be found." *Chan v. Chan*, 2003 MP 5 ¶ 19 (citing *Commonwealth v. Hasinto*, 1 NMI 377, 385 (1990)). An order granting summary judgment is only reviewable if it acts as a final order. *See Villagomez v. Marianas Ins. Co.*, 2006 MP 21 ¶ 6. Here, although the trial court granted summary judgment on the issue of certain facts established through admission as well as the amount of the interest rate, there remained an issue for trial. The trial court set a trial schedule

II

¶ 6 The parties put forward the standard of review for orders granting summary judgment as de novo. *Sablan v. Tenorio*, 4 NMI 351, 355 (1996). While this is technically a correct statement of the summary judgment standard, we review rulings on discovery disputes under an abuse of discretion standard. *Reyes v. Ebetuer*, 2 NMI 418, 423 (1992). In *Reyes*, when considering the challenge to a pre-trial order striking an untimely answer to a request for admissions, we held that "[t]he control of discovery is entrusted to the sound discretion of the trial court and orders concerning discovery will not be disturbed on appeal in the absence of a clear abuse of discretion." *Id.* (quoting *In re Marriage of Adams*, 729 P.2d 1151, 1159 (Kan. 1986)). Therefore, our review concerning the admissions must be made under the abuse of discretion standard: the trial court must have clearly exceeded the bounds of reason or disregarded rules or principles of law and practice to the substantial detriment of a party to have committed an abuse of discretion. *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 41 (citing *Fitial v. Kim Kyung Duk*, 2001 MP 9 ¶ 2). Our review of the legal issues Muna raised in the summary judgment order is de novo.

¶ 7 The question of the rate of interest for an inverse condemnation case is similarly a mixed question of law and fact. While we review de novo the rule of law by which the trial court made its determination, the trial court's selection of the statutory rate of interest in an inverse condemnation case is a factual issue which requires a showing of clear error to be disturbed. *See Santos v. Santos*, 2000 MP 9 ¶ 3. The determination of a reasonable rate of interest for just compensation is a finding of fact, which should be disturbed only if clearly erroneous. *United States v. 429.59 Acres of Land*, 612 F.2d 459, 464 (9th Cir. 1980).

III

¶ 8 We first examine the admissions which the trial court utilized to conclusively establish the date the land was taken and its market value under the Commonwealth Rules of Civil Procedure. Rule 36(a) provides, in pertinent part, that when a request for admission is made properly:

> The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney . . . . An

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which it refused to vacate. Considering the fact that the trial court was ready to proceed to trial, it is clear that the Appealed Order was not a final order at the time it was issued. Accordingly, it was interlocutory in nature and not immediately appealable. It was only as of December 14, 2004, when the parties stipulated to the final facts of the case, rendering a trial unnecessary, that the Appealed Order became final. Muna's counsel filed the notice of appeal on January 4, 2005, well within the thirty days he was required to appeal. Com. R. App. P. 4(a). Accordingly, the appeal is timely and the motion to dismiss this appeal is denied.

> answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

Com. R. Civ. P. 36(a). Com. R. Civ. P. 36(b) continues: "Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." Here, the Government properly served its request for admission. Examining the facts of this case, it is apparent that Muna not only acquiesced to the adoption of the admissions after failing to answer, but also failed to move to withdraw or amend the admissions which were then relied on by the trial court.[4] In *Park v. Kim*, 2007 MP 13 ¶ 16, we held that where "a party fails to answer a request to admit and fails to move for withdrawal of matters deemed admitted, the trial judge has the discretion to award summary judgment to the requesting party."

¶ 9 Under the abuse of discretion standard, we do not find that the trial court clearly exceeded the bounds of reason or disregarded rules or principles of law when it adopted the admissions as facts. Requests for admission are not a substitute for the discovery process and cannot be applied to "controverted legal issues lying at the heart of the case." *People of State of California v. The Jules Fribourg*, 19 F.R.D. 432, 436 (N.D. Cal. 1955). That being said, the request for admission in this case did not exceed the bounds of reason. There is an element of confusion here because the admission, that the taking occurred April 1, 1976, is purely a fact on its face. Yet that fact was chosen based on the legal argument that this is the date on which the Resident Commissioner, the precursor to the Commonwealth, took possession of the land. As will be discussed below, we agree that the date encompasses a legal conclusion as well as an admitted fact, but we also find that the legal conclusion, insofar as the date of the taking, is correct, and there was no prejudice to Muna by the trial court's finding. In addition, we find that the admission that the value of the land at $7 per square meter was reasonable.

¶ 10 We now review the trial court's holding on the issue of the legal conveyance of the land at issue pursuant to Secretarial Order No. 2989 and the Confirmation Deed. As part of the COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, 48 U.S.C. § 1801 note, *reprinted in* 1

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[4] Later, in his motion for reconsideration, Muna's counsel addressed the issue of the admission of the takings date, and argued that he was not bound by the factual admission because it was a legal issue which could not be determined by an admission.

CMC at *lxxxi et seq.*, the United States agreed to transfer the real property it held in the Northern Mariana Islands back to the original owners of Northern Marianas descent. As part of that agreement, the Department of the Interior issued an order separating the Northern Mariana Islands from the rest of the Trust Territory of the Pacific Islands and transferring the public lands to the Resident Commissioner of the new government. Secretarial Order No. 2989, Part VII, § 1 (effective April 1, 1976), *reprinted in* 1 CMC at *cxvi*. This order reads in pertinent part:

> Title to public lands of the Trust Territory of the Pacific Islands which are situated in the Northern Mariana Islands and which are actively used by the Trust Territory Government is hereby transferred to and vested in the Resident Commissioner subject to the continued use of such land by the Trust Territory Government until relocation of the capital . . . . All other public lands situated in the Northern Mariana Islands title to which have not been transferred to the legal entity created by the Mariana Islands District Legislature according to Secretary of the Interior Order No. 2969 shall vest in the Resident Commissioner.

Id. The Confirmation Deed, which was executed by the High Commissioner of the Trust Territory of the Pacific Islands on August 9, 1979, and then registered September 6, 1979, further provides:

> NOW, THEREFORE, in order to forever remove any doubt as to the validity of the vesting of title to public and alien lands made in favor of the Resident Commissioner of the Government of the Northern Mariana Islands pursuant to Secretarial Order 2989, we, the High Commissioner and Alien Property Custodian of the Trust Territory of the Pacific Islands, grantors herein, do hereby ratify, approve, and confirm, the vesting of title to public and alien lands in favor of the Resident Commissioner made pursuant to Secretarial Order 2989, effective as of the 1st day of April, 1976, and we further do by these presents hereby remise, release, convey, transfer, and forever quitclaim, unto the Resident Commissioner, his lawful successors and assigns, all those public and alien lands as described . . . .

Appellant's Opposition to the Motion to Dismiss, Ex. C at 33. It is clear from these documents that the Commonwealth, through the "Resident Commissioner, his lawful successors and assigns," took possession of Muna's land along with all of the other public land it acquired, on April 1, 1976.

¶ 11 If the government takes physical possession of land prior to instituting condemnation proceedings, a court may fix the date of taking as the date of physical possession. *See, e.g.*, *United States v. 191.07 Acres of Land*, 482 F.3d 1132, 1137 (9th Cir. 2007). It is undisputed that the late Vicente S. Muna was the pre-war owner of the land. *See Muna*, 2000 MP 2 ¶ 3. The earliest date, however, that we can unequivocally assign responsibility to the Commonwealth government for physical possession of the land is April 1, 1976. The Munas were excluded from the land that the Commonwealth took; therefore, the Commonwealth physically took the land when it came into possession of the land. Considering that it was conclusively established that

Muna was the pre-war owner of the land, and the land was taken before the Commonwealth existed as an entity, April 1, 1976, is the only date that can be established as a physical taking. While Muna argues that the date the taking was established was 1991, this was merely the date on which clear title was established.

¶ 12 We note that in the Commonwealth, 2 CMC §§ 4711-4751 governs the Government's land acquisition.[5] While the parties did not directly cite these statutes, it continues to be the law, and we do not question its application to land compensation claims against the Government which are submitted on or after January 1, 1990. *Id.* § 4744. We do not have the facts to determine whether the Munas' claim, adjudicated in 1991, was submitted before or after January 1, 1990. Clearly, however, the Land Compensation Act of 2002, 2 CMC § 4741 *et seq*., in putting forth its procedures, does not contemplate claims such as this, which go back to pre-war times. In addition, the only section which specifically provides for inverse condemnation claims is one that provides for litigation expenses. *Id.* § 4712(c). Considering the sheer length of time that has passed and the nature of the claim of inverse condemnation in this case, a broader analysis of Fifth Amendment takings principles is required to get to a fair and equitable result.

¶ 13 The Fifth Amendment of the Constitution of the Commonwealth of the Northern Mariana Islands and the United States Constitution require that when private property is taken for public use by eminent domain, "just compensation" must be provided to the owner. *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 9 (1984). "Just compensation" has been defined as "the fair market value of the property on the date it is appropriated." *Id.* at 10 (citing *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511-13 (1979)). In other words, the owner receives an amount that a willing buyer would have paid in cash for the property at the time of the taking. When it is difficult to measure the market value, or there would be a manifest injustice to the owner or public, however, other measures of "just compensation" may be used. *United States v. Commodities Trading Corp.*, 339 U.S. 121, 123 (1950). For example, if payment of fair market value has been deferred, an additional element of compensation in the form of reasonable interest should be awarded. *Schneider v. County of San Diego*, 285 F.3d 784, 789 (9th Cir. 2002). The owner of the land is entitled to an amount which would equal the "full equivalent of that value paid contemporaneously with the taking." *Id.* at 790 (quoting *Jacobs v. United States*, 290 U.S. 13, 17 (1933)).

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[5] These statutes give a broader framework for land acquisition, including a provision which requires that the government not "intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of [his or her] real property" but instead utilize the eminent domain procedure under 1 CMC § 9211 *et seq.* 2 CMC § 4712.

¶ 14 Awarding just compensation is a judicial, not a legislative function. *Id.* at 793. As a result, statutory vehicles which may provide a remedy are not solely determinative. Rather, "the amount of prejudgment interest should be calculated in a manner that ensures that the property owner receives constitutionally adequate compensation." *Id.* at 794. A specific interest rate prescribed by a particular statute is not a ceiling on the amount which can and must be paid in a condemnation proceeding by the Government. *Kirby*, 467 U.S. at 11 n.16. In other words, neither we nor the trial court are bound by statutory interest rates in an inverse condemnation proceeding.

¶ 15 Both parties argue that different statutory interest rates should be applied. Muna cites to 1 CMC § 2553(k), which states that the unpaid balance of Commonwealth indebtedness shall accrue interest equal to fifteen percent per annum as set out in 4 CMC § 1817. The Government argues that PL 14-35 repealed 4 CMC § 1817 on October 12, 2004, and is no longer in effect. While there is no statutory interest rate set for inverse condemnation actions, the Government cites to the interest rate for eminent domain actions, which is set at three percent per annum under 1 CMC § 9227(b). The Government also notes that the statutes that cover interest on money judgments, including the earlier six percent per annum under 8 TTC § 1 (1970 ed.), and the later nine percent enacted in 1976 under 7 CMC § 4101 *et seq.*, are not applicable because there was no money judgment in this case prior to the trial court's decision of December 4, 2003. We find that none of these statutes should be applied across the board to an inverse condemnation proceeding. Instead, it is necessary to make the land owner whole, which requires a broader examination of the value of the land, as well as other factors discussed below.

¶ 16 In inverse condemnation proceedings in other jurisdictions, the valuation was done before the land was physically taken, something our statute similarly contemplates but did not happen in the instant case. 2 CMC § 4712(a)(3). The difference in value that was addressed in other jurisdictions occurred between the time of the taking and the time of the actual payment. Sometimes, Congress attempts to take a parcel of land years before a trial with no actual physical taking, but nevertheless affects the value of the land as well as the legal date of the taking. *See generally Kirby*, 467 U.S. 1. Our situation, while somewhat analogous, is different than those situations in other jurisdictions. Here, we have land that was taken first, before any notice or trial, and so the difference in value lies in the difference between the time the land was physically taken and the time of the payment which should be made at present.[6]

[6] As discussed previously, because this is an inverse condemnation case where the land was taken before the establishment of the Commonwealth (indeed, Tobias Muna, an heir to the original deceased owner, made the original claim), and the time of the taking has already been established as April 1, 1976, the Land Compensation Act does not apply here.

¶ 17 The Fifth Amendment requires that a land owner be awarded an amount more or less equal to the fair market value of the property on the date that payment is actually tendered. *Id.* at 17. Valuation is determined both by the value at the actual time of the physical taking as well as the time of the payment for the taking. *Id.* The practice of federal courts before *Kirby* had been to use the date of the commencement of trial to determine the date of the valuation. *Id.* In *Kirby*, the government argued that the value of condemned land had to be given a fixed date. *Id.* Because it was unknown when the United States would exercise its option to purchase a property, and because it is "notoriously difficult" to predict the value of land at a future date, the Court rejected that approach. *Id.* The Supreme Court in *Kirby* stressed that "the owner is entitled to interest thereon sufficient to ensure that he is placed in as good a position pecuniarily as he would have occupied if the payment had coincided with the appropriation." *Id.* at 10. Kirby rejected the idea of a mandated amount of interest for all condemnations because "[c]hange in the market value of particular tracts of land over time bears only a tenuous relationship to the market rate of interest. Some parcels appreciate at rates far in excess of the interest rate; others decline in value." *Id.* at 17. In addition, Kirby acknowledged that value could be affected by other issues, such as an expansion of residential areas surrounding the condemned land at issue. *Id.* at 18 n.28.

¶ 18 *Kirby* searched for some type of procedure which could modify a condemnation award when there was a "substantial delay between the date of valuation and the date the judgment is paid, during which time the value of the land changes materially," but the Court refused to institute a rule compelling a specific amount of interest; *Kirby* stopped short of prescribing a particular method of redress. *Id.* at 18. Instead, *Kirby* suggested, but did not mandate, that a Federal Rule of Civil Procedure 60(b) motion to amend a final order be used to amend a condemnation award. *Id.* The parties at a hearing would not be allowed to question the adjudicated value of the land at the date of the original valuation and would be limited to presenting evidence on the market value between the date of the original valuation and the date on which the judgment was paid. *Id.* at 18-19. Further refinements were left up to the courts. *Id.* at 19.

¶ 19 The Ninth Circuit's method to determine prejudgment interest when payment of just compensation is delayed is to determine what "a reasonably prudent person investing funds so as to produce a reasonable return while maintaining safety of principal" would have received. *United States v. 50.50 Acres of Land*, 931 F.2d 1349, 1354 (9th Cir. 1991). We find that this method of valuation makes sense, but we also believe that a final award should bear some relation to the current value of the property. *See Kirby*, 467 U.S. at 17. Given the takings date of April 1, 1976, and the admission of the value of the land at $7 per square meter, which is no longer in

question, the trial court should be able to hold a hearing and take evidence to determine how much compensation is fair.

IV

¶ 20 Accordingly, we AFFIRM the trial court's order granting summary judgment. We REVERSE the trial court on the legal analysis used to determine the interest rate and REMAND for the trial court to make a factual finding as to the final judgment amount. In making its determination, the trial court shall examine the current value of the property as well as the amount of money Muna could have obtained by prudently investing the proceeds of $7 per square meter on April 1, 1976. Using these as guideposts, we believe that the trial court will come to a fair and equitable amount to award to Muna.[7]

Concurring:
Castro, Manglona, JJ.

[7] We note that under 2 CMC § 4712(a)(3)(B), current fair market value does not include an increase or decrease caused by the public improvement for which the property was acquired. As this is a very straightforward policy generally, which does not present the same kind of problem relating to the age of the claim, we adopt it here as a sound method of valuation.