

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

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IN RE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,  
*Petitioner.*

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**Supreme Court No. 2016-SCC-0014-PET**

Superior Court No. 12-0263-CV

**OPINION**

**Cite as: 2016 MP 8**

Decided June 23, 2016

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David Lochabay, Assistant Attorney General, Office of the Attorney General,  
Saipan, MP, for Petitioner.

Michael W. Dotts, Saipan, MP, for Respondents.

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BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

PER CURIAM:

¶ 1 The Commonwealth of the Northern Mariana Islands (“Commonwealth”) petitions for a writ of prohibition preventing the trial court from proceeding with a hearing where judgment creditors will seek payment against the Commonwealth by challenging the constitutionality of the Appropriations and Budget Authority Act of 2016, Pub. L. No. 19-08 (“the 2016 Budget Act”). For the reasons stated below, we DENY the petition.

### I. FACTS AND PROCEDURAL HISTORY

¶ 2 Jotonia Aguon, Timothy Cruz, and Gorjonny Camacho (collectively “Plaintiffs”) hold unpaid stipulated judgments against the Commonwealth. The underlying claims of these judgments involve personal injury and wrongful death due to the negligence of the Commonwealth Health Corporation employees.

¶ 3 On October 7, 2015, the Plaintiffs filed motions for orders in aid of judgment in the trial court asserting that the Commonwealth has the ability to pay because under the 2016 Budget Act, the Governor has the power to reprogram funds for the payment of judgments. Additionally, the Plaintiffs argued that the current budget, which has only allocated \$8,000 to pay off judgments, violates Article III, Section 9(a) of the NMI Constitution that the annual budget be balanced.

¶ 4 In response to the Plaintiffs’ motions for orders in aid of judgment, the Commonwealth argued that under *Marine Revitalization Corp. v. Dep’t of Land & Natural Res.*, 2010 MP 18, the trial court cannot compel the appropriation of funds to satisfy judgments against the government. Subsequently, the parties exchanged a number of motions and briefs.

¶ 5 The trial court then held a status conference to determine whether an evidentiary hearing would be necessary to decide the pending motions. At the conference, the court inquired into whether a separate motion challenging the constitutionality of the 2016 Budget Act had been filed. The Plaintiffs stated that although there was no stand-alone motion, the issue was raised in their initial motions for orders in aid of judgment. The court then directed the Plaintiffs to file a stand-alone motion for a ruling on the constitutionality of the 2016 Budget Act.

¶ 6 On March 4, 2016, the Plaintiffs moved to declare the 2016 Budget Act unconstitutional, which the Commonwealth opposed. On March 31, the Commonwealth filed the present application for a writ of prohibition to stop the post-judgment hearing from proceeding. We now review the petition.

## II. JURISDICTION

¶ 7 We have jurisdiction to review a petition for writ of prohibition. NMI CONST. art. IV, § 3.

## III. DISCUSSION

¶ 8 Issuance of a writ of prohibition is a drastic remedy invoked only in “the most dire of instances.” *In re Buckingham*, 2012 MP 15 ¶ 7 (citing *In re Cushnie*, 2012 MP 3 ¶ 6). Our power to grant a writ is discretionary, and though a lower court may err egregiously, we will generally decline to issue a writ if an appeal is available at law. *Tudela v. Superior Court*, 2006 MP 7 ¶ 12. In reviewing the writ petition, we ask whether the lower court’s resolution of issues is “so far afield that a writ, rather than appeal, is a permissible method of review.” *Commonwealth v. Superior Court*, 2004 MP 14 ¶ 7. In deciding whether to issue a writ, we consider the five *Tenorio* factors:

1. The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief desired;
2. The petitioner will be damaged or prejudiced in a way not correctable on appeal;
3. The lower court’s order is clearly erroneous as a matter of law;
4. The lower court’s order is an oft-repeated error, or manifests a persistent disregard of applicable rules; and
5. The lower court’s order raises new and important problems, or issues of law of first impression.

*Id.* (citing *Tenorio v. Superior Court*, 1 NMI 1, 9–10 (1989)).<sup>1</sup> Demonstrating all five factors is not required. *In re Buckingham*, 2012 MP 15 ¶ 7. However, the petitioner must show clear error to obtain writ relief. *Commonwealth v. Commonwealth Utils. Corp.*, 2014 MP 21 ¶ 9 (citing *In re Buckingham*, 2012 MP 15 ¶ 10). In reviewing for clear error, we give “high deference to the lower court.” *Xiao Ru Liu v. Commonwealth*, 2006 MP 5 ¶ 17. Since demonstrating clear error is necessary for the issuance of a writ, we first review this threshold issue.

¶ 9 The Commonwealth contends the trial court’s order directing the Plaintiffs to file a stand-alone motion challenging the constitutionality of the 2016 Budget Act is clearly erroneous because the court lacks jurisdiction. Additionally, the Commonwealth asserts the court’s order in aid of judgment proceedings are improper because the constitutionality of the budget act has no bearing on the Commonwealth’s means to pay the debt.

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<sup>1</sup> The standards for issuing a writ of prohibition and writ of mandamus are the same. *Kevin Int’l Corp. v. Superior Court*, 2006 MP 3 ¶ 14 n.6 (citing *Commonwealth v. Superior Court*, 2004 MP 14; *Paulis v. Superior Court*, 2004 MP 10).

¶ 10 When reviewing an alleged jurisdictional error of a lower court, we determine whether “the challenged assumption . . . of jurisdiction is so plainly wrong as to indicate failure to comprehend or refusal to be guided by unambiguous provisions of a statute or settled common law doctrine.” *Tenorio*, 1 NMI at 7–8 (citing *American Fidelity Ins. Co. v. U.S. Dist. Court for N. Dist. of Cal.*, 538 F.2d 1371, 1374 (9th Cir. 1976)). The lower court’s assumption of jurisdiction must amount to a “usurpation of power” to necessitate the extraordinary remedy of a writ of prohibition. *Id.* at 9 (citing *Will v. United States*, 389 U.S. 90, 95 (1967)). If there is a “rational and substantial” legal basis supporting the lower court’s jurisdiction, issuance of a writ is not proper “even though on normal appeal a reviewing court might find reversible error.” *Id.* at 8 (citing *American Fidelity Ins. Co.*, 538 F.2d at 1374).

¶ 11 Here, the Plaintiffs seek to challenge the constitutionality of the 2016 Budget Act in a post-judgment proceeding. While the procedural posture of this case is unique, the Commonwealth fails to persuade us that the Superior Court’s assumption of jurisdiction amounts to a usurpation of power. The NMI Constitution vests judicial powers in the Superior Court by virtue of Article IV, Section 1.<sup>2</sup> Judicial power to review the constitutionality of statutes has been recognized at least since *Marbury v. Madison*, 5 U.S. 137, 176–80 (1803), and we have embraced this settled law in *Tenorio*. 1 NMI at 16–17. *See also United States v. Raines*, 362 U.S. 17, 20 (1960) (“The very foundation of the power of the federal courts to declare [congressional enactments] unconstitutional lies in the power and duty of those courts to decide cases and controversies properly before them.”); *INS v. Chadha*, 462 U.S. 919, 942 n. 13 (1983) (rejecting assertion that executive assent to an unconstitutional bill “shield[ed] it from judicial review”). An act of a legislature that contravenes the constitution cannot be deemed effectual, and thus, the courts have a duty to determine its constitutionality and to declare what the law is. *See Marbury*, 5 U.S. at 177–78 (“It is emphatically the province and duty of the judicial department to say what the law is. . . . If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply.”). Moreover, the Commonwealth Superior Court possesses original jurisdiction “in all cases in equity and at law,” NMI CONST. art. IV, § 2, and the Commonwealth Code provides for post-judgment proceedings in which the Superior Court may hold hearings on “the question of the debtor’s ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding.” 7 CMC § 4205. Given the judicial power and jurisdiction over cases in law and equity vested by the NMI Constitution, we cannot conclude that the Superior Court lacks jurisdiction to examine the

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<sup>2</sup> “The judicial power of the Commonwealth shall be vested in a judiciary of the Northern Mariana Islands which shall include one supreme court and one superior court and such other inferior courts as may be established by law.”

constitutionality of a public act enacted by the legislature, namely the 2016 Budget Act.

¶ 12 The Commonwealth further asserts the constitutionality of the budget act does not properly bear upon the question of its ability to pay unsatisfied judgments. According to the Plaintiffs, a budget that ignores its liabilities is contrary to the mandates of the NMI Constitution. Thus, a determination regarding the constitutionality of the budget act is necessary in informing the trial court the fastest way the Commonwealth can pay the debt. Regardless of the respective merits of these arguments, we are not convinced we must address this issue because the Commonwealth can appeal the court’s ruling should the budget be declared unconstitutional. *See Tudela*, 2006 MP 7 ¶ 12 (“It is the general rule that where the law allows an appeal from an order or judgment, even when the tribunal making such order or rendering such judgment exceeded its authority in so doing, a writ of review may not be granted.” (quoting *Ivory v. Superior Court*, 85 P.2d 894, 896 (Cal. 1939) (internal quotation marks omitted))).

¶ 13 The trial court may be inclined to remedy the apparent injustice present in this case because the Plaintiffs suffered personal injuries and are unable to collect from the Commonwealth notwithstanding the stipulated judgments. Nevertheless, *Marine Revitalization Corp.* is the current law of this jurisdiction, and the trial court cannot override the decision of this Court. In *Marine Revitalization Corp.*, we clearly held that the courts do not have the power to—directly or indirectly—order the appropriation of funds to satisfy judgments against the Commonwealth. 2010 MP 18 ¶ 54. We reached this ruling so as not to violate the separation of powers doctrine. *Id.* Until this Court issues a decision to the contrary, the trial court is bound by that precedent. *See Auto Equity Sales, Inc. v. Superior Court*, 369 P.2d 937, 940 (Cal. 1962) (“Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court.”).

¶ 14 While we are tempted to halt the trial court’s post-judgment proceedings, there is no order, at this juncture, directing the legislature to appropriate funds. In sum, issuance of a writ is not proper because the Commonwealth failed to demonstrate a clear jurisdictional error of the lower court and the other issue presented by the Commonwealth may be reviewable on appeal.

#### IV. CONCLUSION

¶ 15 Accordingly, we DENY the petition for a writ of prohibition.

SO ORDERED this 23rd day of June, 2016.

/s/  
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ALEXANDRO C. CASTRO  
Chief Justice

/s/  
JOHN A. MANGLONA  
Associate Justice

/s/  
PERRY B. INOS  
Associate Justice