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

ISLA DEVELOPMENT PROPERTY, INC.,
Plaintiff-Appellee,

v.

STEVE K. JANG,
Defendant-Appellant.

Supreme Court No. 2017-SCC-0009-CIV

Superior Court No. 15-0065

OPINION

Cite as: 2017 MP 13

Decided December 15, 2017

Michael A. White, Saipan, MP, for Plaintiff-Appellee.

Daniel T. Guidotti, Saipan, MP, for Defendant-Appellant.

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

MANGLONA, J.:

¶ 1 Defendant-Appellant Steve K. Jang ("Jang") appeals the trial court's award of prejudgment interest ("order") on a promissory note ("note"). He contests the court's interpretation of the note as providing for prejudgment interest and its application of the nine percent statutory interest rate. For the following reasons, we VACATE the order and REMAND with instructions to properly analyze the amount of prejudgment interest due, if any.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 On April 4, 2014, Jang signed a note, promising to pay Isla Development Property, Inc. ("Isla") $29,000.00 in back rent within six months, due on or before October 2014. The note provided:

> Failure to pay any part of the principal of this note when due shall authorize the holder of this note to declare immediately due the whole unpaid principal balance and accrued interest, and exercise any and all rights and remedies possessed by the holder of this note at law or equity.

¶ 3 Jang failed to pay back the note before the deadline, and Isla sued. Isla moved for summary judgment, requesting prejudgment interest. The court construed the terms of the note to contain a provision for prejudgment interest. Moreover, because the note did not specify an interest rate, the court used 5 CMC § 3118(d),[1] a gap-filling provision, to implement a nine percent interest rate as specified in 7 CMC § 4101,[2] the Commonwealth's post-judgment interest statute. In sum, the court ordered Jang to pay nine percent interest on the $29,000.00 unpaid principal from the default date to the judgment date, totaling $6,328.36.

¶ 4 Jang appeals the order.

II. JURISDICTION

¶ 5 The Supreme Court has jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 6 There are two issues on appeal. We review whether the note provides for prejudgment interest, and if so, what the appropriate rate of prejudgment interest is. We review contract interpretations de novo. *See Fusco v. Matsumoto*, 2011 MP 17 ¶ 26 ("Interpretation of contract terms is a question of law that we review

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[1] "Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue." 5 CMC § 3118(d).

[2] "Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered." 7 CMC § 4101.

de novo." (citing *Malite v. Superior Court*, 2007 MP 3 ¶ 23)); *Manglona v. Commonwealth*, 2005 MP 15 ¶ 41 (We review de novo if "the award hinges on interpretation of decisional or statutory law.") (citing *Pauley v. Gilbert*, 522 S.E.2d 208, 213 (W. Va. 1999)).

IV. DISCUSSION

A. Provision for Prejudgment Interest

¶ 7 Jang argues the court erred in interpreting the note when it found he was obligated to pay interest on the $29,000 due in principal. He asserts the court failed to interpret the note according to its plain meaning when it concluded the accrued interest comes from the unpaid principal.

¶ 8 "A promissory note is a form of contract subject to the ordinary requirements of contract law." *Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 13. A court's primary concern when interpreting a contract is to "give effect to the intentions of the parties . . . presumed to be encompassed by the plain language of [the] contract['s] terms." *Saipan Achugao Resort Members' Ass'n v. Wan Jin Yoon*, 2011 MP 12 ¶ 15 (quoting *Commonwealth Ports Auth. v. Tinian Shipping Co.*, 2007 MP 22 ¶ 16). We "consider the manner in which a reasonable person would have used the relevant language in the contract by pondering the circumstances surrounding the contract's negotiation, and by considering the purposes which the parties intended to accomplish by entering into the contract." *Fusco*, 2011 MP 17 ¶ 27 (quoting *Cook Composites, Inc. v. Westlake Styrene Corp.*, 15 S.W.3d 124, 132 (Tex. App. 2000)). "Moreover . . . we avoid contract interpretations that will defy common sense or lead to absurd results." *Manglona v. Baza*, 2012 MP 4 ¶ 36. Thus, we analyze whether the plain meaning of the phrase "unpaid principal balance and accrued interest" provides for the payment of interest.

¶ 9 The plain language of the note's last paragraph indisputably contemplates accrued interest. *See Exxon Mobil Corp. v. Comm'r*, 484 F.3d 731, 732 n.1 (5th Cir. 2007) ("Accrued interest is interest that is due or earned as of a certain calculation date but which has not yet been paid."); Black's Law Dictionary 695 (9th ed. 2010) (defining accrued interest as "interest that is earned but not yet paid . . . ."). The fact that the note's first paragraph does not provide for interest or specify an interest rate is not decisive, as "[a] written contract must be read as a whole and every part interpreted with reference to the whole." *See Wapato Heritage, L.C.C. v. United States*, 637 F.3d 1033, 1039 (9th Cir. 2011) (quoting *Klamath Water Users Protective Ass'n v. Patterson*, 204 F.3d 1206, 1210 (9th Cir. 1999)). The note's first paragraph deals only with principal, which is appropriate given that if Jang had paid off the $29,000 principal on or before October 2014, only principal on the loan would have been due. The note expressly provides for interest, noting interest will accrue if there is any unpaid principal after payment is due. *See, e.g., Tomlinson v. 1661 Corp.*, 377 F.2d 291, 294 n.3 (5th Cir. 1967) (finding a contract with an option at default to declare due "the principal sum then remaining unpaid, together with accrued interest" included interest payments). Reading the last paragraph out of the note, on the

other hand, would not be reading the note as to its plain meaning.

¶ 10 Jang further argues that even if the note provides for the payment of interest, it provides for the payment of pre-default interest, not prejudgment interest. *See* Black's Law Dictionary 696 (Abridged 9th ed. 2010) (defining prejudgment interest as "interest accrued either from the date of the loss or from the date the complaint was filed up to the date final judgment is entered."); *Wells Fargo Bank, NA v. Cept 5, Inc.*, 2011 U.S. Dist. LEXIS 65654, at *15 S.D. Ind. June 20, 2011) (referring to pre-default interest as "interest accrued prior to default"); *see, e.g., Commonwealth v. Lot No. 218-5 R/W*, 2016 MP 17 ¶ 2 n.2 (explaining that prejudgment interest accrued from "the date of the filing of the complaint . . . to the date of the judgment."). He claims the phrase at issue, "unpaid principal balance and accrued interest," is part of a remedies clause allowing Isla to declare certain sums due on Jang's default. Jang argues no interest accrued on the note, so should Isla demand interest no interest would be due.

¶ 11 We agree the note contains a remedies clause. In particular, the note provides the lender an optional acceleration clause in case of default. *See, e.g.*, *Beal Bank v. Crystal Props., LTD.*, 268 F.3d 743, 748 (9th Cir. 2001) (interpreting "[s]hould default be made . . . at the option of the holder hereof . . . the entire balance of principal and accrued interest then remaining unpaid shall become immediately due and payable" as providing the note holder an option to accelerate unpaid debt upon default); *Bank One, Tex., N.A. v. Taylor*, 970 F.2d 16, 31 (5th Cir. 1992) (finding notes containing acceleration clause gave the bank an option "to accelerate the unpaid principal balance and accrued interest 'if default occurs in the punctual payment of . . . principal . . . or upon the occurrence of a default'"). Specifically, the clause gives the note's holder the option to demand an interest payment if all principal is not paid by the default date. The interest due would be that which had accrued up to the time of default. Thus, the note contemplates pre-default interest, not post-default prejudgment interest.

¶ 12 Because the note includes a provision for pre-default interest but no interest rate is specified, 5 CMC § 3118(d)'s gap-filling provision would be applicable in determining the proper rate of pre-default interest. But pre-default interest is not at issue—Isla only sought prejudgment interest in its complaint. Isla needed to demand the accrued pre-default interest immediately to be entitled to it. Thus, although pre-default interest did accrue, Isla did not demand it. Therefore, since the note provides for pre-default interest, we consider whether the award of nine percent prejudgment interest is appropriate.

B. Prejudgment Interest Rate

¶ 13 Jang asserts the note did not provide any right for Isla to collect prejudgment interest. Because Jang did not agree to pay prejudgment interest to Isla, there was no provision for prejudgment interest in the note to which to apply 5 CMC § 3118(d) and 7 CMC § 4101. He argues his liability for prejudgment

interest, if any, should be determined in accordance with *Manglona*, 2010 MP 10.

¶ 14 "There is no statutory prejudgment interest rate in the Commonwealth." *Manglona*, 2010 MP 10 ¶ 20. A contract may provide for prejudgment interest, or a court may award prejudgment interest "as a damage award . . . even when interest is not stipulated for by contract or authorized by statute." *Baza*, 2012 MP 4 ¶ 23; *see also United States v. North Carolina*, 136 U.S. 211, 216 (1890) (noting "[i]nterest, when not stipulated for by contract, or authorized by statute, is allowed by the courts as damages for the detention of money or of property, or of compensation . . . .").

¶ 15 In *Manglona*, we determined the proper analysis for prejudgment interest in the absence of controlling statutory law. 2010 MP 10 ¶ 26. Because the legislature "ha[d] not enacted a prejudgment interest rate statu[t]e," *id.* ¶ 30, we considered 5 CMC § 3118(d), 7 CMC § 4101, and other statutes "that discuss interest rates with enough specificity for the Court to . . . determin[e] if there is any statutory basis for determining the prejudgment interest rate." *Id.* ¶ 22. We concluded "none of our other statutory laws discussing interest rates [were] analogous enough to a prejudgment interest context to use them in setting the appropriate rate." *Id.* ¶ 30. We adopted the federal approach, finding though a court may award prejudgment interest in the absence of explicit statutory authorization, the award must be grounded in considerations of fairness and focused on making the wronged party whole. *Id.* ¶¶ 29–30. Although a post-judgment interest statute may influence courts in determining the appropriate prejudgment interest award, we noted that courts must consider the factual circumstances surrounding the contract, deciding the interest rate based on equity and the wronged party's actual losses. *Id.* ¶¶ 27–31. We thus found the court decided the prejudgment interest rate without "reference to any applicable law or factual analysis" and remanded the case, instructing the trial court to "award prejudgment interest that is equitable and compensates [appellant] for his actual losses." *Id.* ¶¶ 21, 32.

¶ 16 Here, the order confused the proper analysis as to whether a contract contains a provision for interest and whether prejudgment interest should be awarded. *See* Order at 4 ("As the contract provides for interest to be paid on unpaid amounts, prejudgment interest should be awarded and there is no genuine issue of material fact as to this issue."). Because prejudgment interest was not provided for in the note, it was inappropriate to apply 5 CMC § 3118(d) in determining the prejudgment interest rate. Furthermore, the order contains no analysis of damages resulting from Jang's delay in payment or other facts necessary in determining Isla's losses. Thus, although 7 CMC § 4101 may be used as a factor in the court's analysis, prejudgment interest should be awarded based on Isla's damages—a determination we are unable to make as no evidence of damages was produced.

V. CONCLUSION

¶ 17 For the reasons stated above, we hereby VACATE the order as it pertains to prejudgment interest and REMAND the case for a determination of the proper rate of prejudgment interest, if any.

SO ORDERED this 15th day of December, 2017.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice